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HERITAGE PROPERTY INVESTMENT TRUST, INC.

Corporate Office: 181 Dartmouth Street, Boston, Massachusetts 02116
Telephone: (617) 247-2200 • Fax: (617) 268-0885 • Legal Dept. Fax: (617) 267-4557
www.heritagerealty.com

August 13, 2004

VIA NEXT DAY DELIVERY

Jeffrey Vernon
Vice President
Business Development and Production
Snow Management Group, Inc.
1 Waterside Lane, 3rd Floor
Essex, CT 06426-1056

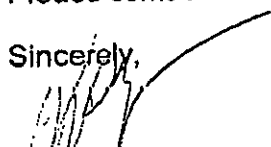
**Re: Proposed Contract between Heritage Realty Management, Inc. ("Heritage")
and Snow Management Group, Inc. and John Allin d/b/a Allin Companies
("Contractor")**

Dear Jeff:

In accordance with our conversation last week, enclosed is the first draft of the proposed contract referenced above. Please accept this letter as confirmation that Heritage is willing to enter into the above-referenced contract, provided we can reach agreement on the essential business terms and execute a contract within the next 10 days. It is our understanding that this a non-binding expression of Heritage's intent and that neither Heritage or Contractor are obligated in any way unless and until such time as the contract is signed by both parties.

Please contact me in the event you have any questions.

Sincerely,


Louis C. Zicht
Vice President and General Counsel
LCZ/cej

Enclosure

cc: Robert Prendergast
Mark Bush
Bill Read (Mequon WI)
Tom Wellman (Speedway IN)



Contract dated October 12, 2004 between Heritage Realty Management, Inc.
(the "Owner")
and John Allin, d/b/a Allin Companies, d/b/a Snow Management Group (the
"Contractor")

PROPERTIES: The properties (hereinafter referred to as "Properties"), property addresses and fixed annual snow removal fees are enumerated on Exhibit A attached to this Contract.

OWNERS AND GENERAL PARTNERS OF OWNERS: The Owners and General Partners of Owners are enumerated on Exhibit B attached to this Contract (hereinafter referred to as "Owner" or "Owners and General Partners").

MANAGING AGENT: Heritage Realty Management, Inc. (hereinafter referred to as "Heritage"), a Maryland corporation.

ADDRESS: 131 Dartmouth Street, 6th Floor
Boston, MA 02116-5134

CONTRACTOR: John Allin, d/b/a Allin Companies, d/b/a Snow Management Group (hereinafter collectively referred to as "Contractor").

ADDRESS: 1406 West 21st Street
Erie, PA 16502

DESCRIPTION OF OPERATIONS: Contractor is an experienced and professional organization that specializes in the management and supervision of snow and ice removal services for commercial properties provided under subcontracts with reputable commercial snow removal contractors (the "Subcontractors"). The Contractor shall provide all services required to manage, supervise and assure that Contractor or the Subcontractors shall accomplish the following at the Properties covered by this Agreement: Snow and ice plowing, snow blowing, shoveling, salting, sanding and snow and ice removal operations in accordance with this Contract, including the attached Exhibit C. Snow and ice plowing, snow blowing, shoveling, salting, sanding and snow and ice removal operations (hauling operations are only included if specified on Exhibit D), including all labor, machinery, materials, services, equipment and supervision provided in connection therewith, are hereinafter referred to, individually and collectively, as "Operations." Additional specifications, if any, for each of the Properties, shall be agreed upon by Contractor and Heritage and attached hereto as Exhibit D within thirty (30) days of the date of this Agreement.

In consideration of the mutual covenants contained in this Contract, Heritage and Contractor agree as follows:

1. **ACCEPTANCE OF CONTRACT:** This contract must be accepted and executed by both parties within fifteen (15) days of the date of this Contract.

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2. **CONTRACT DOCUMENTS:** The Contract documents consist of this Contract which includes the Exhibits and Addenda referred to herein and attached hereto, all of which are incorporated herein by reference and form this Contract. This Contract represents the entire and integrated agreement between Heritage and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral.
3. **THE OPERATIONS:** Contractor shall perform or cause the Subcontractors to perform the Operations, as described in this Contract, in a good workmanlike and expeditious manner and in compliance with all laws, codes and ordinances. Contractor shall obtain all required permits and approvals to perform the Operations.
4. **SUBCONTRACTS:** Contractor shall retain Subcontractors to perform the Operations with respect to each of the Properties and shall enter into subcontracts in the form of Exhibit E attached hereto and incorporated herein by reference (the "Subcontracts"). Contractor shall deliver copies of the signed Subcontracts for each Property to Owner prior to October 31, 2004. Contractor may redact the payment amount and terms of any Subcontract prior to delivering copies to Owner. However, in the event Owner becomes the assignee of any Subcontract provided in this Agreement, Contractor shall immediately provide Owner with an unredacted copy of any Subcontract, including the payment amount and terms. All portions of the Operations that Contractor does not perform directly shall be performed under the Subcontracts by Subcontractors approved in advance by Heritage, which approval shall not be unreasonably withheld or delayed. Contractor shall be responsible for the management and payment of the Subcontractors and shall comply with all of its obligations under the Subcontracts. Contractor shall remain fully responsible for any and all of its obligations and responsibilities under this Contract and shall not be relieved of any such obligations and responsibilities in the event that any Operations are subcontracted.
5. **TERM:** The initial term of this Contract shall be five (5) years commencing on October 1, 2004 and terminating on September 30, 2009 (the "Initial Term"). Following the Initial Term, if Contractor is not in default of any terms of the Contract and this Contract has not been terminated by Heritage, the term of the Contract will be extended on a month-to-month basis until cancelled by either party given thirty (30) days written notice of cancellation to the other party.
6. **CONTRACT PRICE AND PAYMENT:** The annual contract price for the Operations is a fixed annual price itemized on a per property basis for each year of the term of this Contract, as shown on Exhibit A. Contractor acknowledges that Heritage reserves the right to review the annual contract amounts on an annual basis, specifically with respect to Colonial Commons and Long Meadow Shopping Centers, which are recent acquisitions and for any Properties affected by material changes in size, tenant obligations or otherwise. In the event Heritage's analysis indicates support for an adjustment in the annual contract amounts for the years two through five of this Agreement, Contractor agrees to negotiate in good faith in an effort to agree upon equitable annual amounts for the Properties under review. Payments shall be made by Heritage to Contractor according to the following procedure:

(a) Contractor shall submit written invoices to Owner for payment by the first day of the month in which the payment is due, with separate invoices for each Property and a summary invoice for each billing period and Heritage shall deliver payment to Contractor, on the following dates and in the following amounts:

- (i) October 15: 10% of the fixed annual amount due for each Property;
- (ii) November 15: 10% of the fixed annual amount due for each Property;
- (iii) December 15: 15% of the fixed annual amount due for each Property;
- (iv) January 15: 20% of the fixed annual amount due for each Property;
- (v) February 15: 20% of the fixed annual amount due for each Property;
- (vi) March 15: 15% of the fixed annual amount due for each Property;
- and
- (vii) May 15: 10% of the fixed annual amount due for each Property.

(b) Contractor's invoices, subsequent to the commencement of the Operations, shall include the following:

(i) signed original mechanic's lien waivers or affidavits from the Subcontractors, certifying that all amounts due to the Subcontractors for performance of the Operations have been paid in full through the invoice date and final lien waivers prior to Owner releasing the final annual payment (notwithstanding the foregoing, Owner may elect to waive the requirement of partial mechanic's lien waivers or affidavits from any subcontractors in the event of a dispute between Contractor and Subcontractor if Contractor provides adequate assurance that the dispute will be resolved and the mechanic's lien waiver will be issued on a timely basis); and

(ii) Contractor's affidavit certifying that all the Subcontractors have been paid in full for the Operations performed by the Subcontractors through the invoice date.

If Heritage fails to pay Contractor in a timely manner, and Contractor has given Heritage ten (10) days written notice of such late payment, then Contractor may charge a finance charge of one percent (1%) per month with an annual rate of twelve percent (12%) on any past due balances.

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7. **INSURANCE:** Contractor shall purchase and maintain such insurance as will protect Contractor, Heritage, Heritage Property Investment Trust, Inc., Owner(s), General Partner(s) of the Owners and the tenants at the Property(ies) from the claims set forth below which may arise out of or result from Operations, attempted Operations or failure to perform Operations under the Contract, whether such Operations are performed or attempted by Contractor or by any Subcontractor or by anyone directly or indirectly employed by any of them or by anyone else for whose acts any of them may be liable.

(a) Claims under Worker's or Workmen's Compensation Benefits, Disability Benefits and other employee benefit acts;

(b) Claims for damages because of bodily injury, occupational sickness or disease or death of any person employed by Contractor;

(c) Claims for damages because of bodily injury, sickness or disease, or death of any person other than a person employed by Contractor;

(d) Claims for damages, other than to Contractor's work itself because of injury to or destruction of property, including loss of use resulting there from;

(e) Claims from damages because of bodily injury or death of any person or persons or property damage arising out of the ownership, maintenance, use, loading or unloading of any motor vehicle;

(f) Claims involving contractual liability applicable to Contractor's obligations under the Contract;

(g) Claims which include the foregoing (a) through (f), but not limited thereto, which may occur while Operations are being performed or while Operations are being attempted which may occur as a result of the failure to perform Operations and claims which may occur after Operations are completed.

The limits of liability and coverage shall be as required by law, but not less than as set forth on the attached Insurance Requirements Schedule attached hereto as Exhibit F. Contractor shall supply a current Certificate of Insurance and certified copies of its insurance policies, if requested by Owner, prior to the execution of this Contract. Insurance coverages must be provided by an insurance company or companies acceptable to Heritage and in a format acceptable to Heritage. Heritage, Heritage Property Investment Trust, Inc., Owner(s), General Partner(s) of the Owner(s), and the tenants at the Property(ies) must be included as insureds on Contractor's liability policies. The minimum limits of liability insurance required pursuant to this Contract shall in no way limit or diminish Contractor's liability under this Contract, including Contractor's indemnification obligations.

Notwithstanding anything to the contrary in this Agreement, although Contractor shall be obligated to obtain Umbrella/Excess Liability Insurance ("Excess Coverage") with limits of up to \$50,000,000 general aggregate and \$50,000,000 per occurrence, Contractor

shall only be required to pay the premiums for the Excess Coverage in the amount of \$5,000,000 general aggregate and \$5,000,000 per occurrence. Based upon Exhibit G attached hereto, Heritage and Contractor acknowledge that the additional premium to increase the Excess Coverage to \$50,000,000 from \$5,000,000 for the period October 1, 2004 through April 27, 2005 is \$40,500. ~~Contractor agrees to pay the additional premium on or before the due date and~~ Heritage agrees to reimburse Contractor within ten (10) days of receipt of Contractor's annual premium invoice. Based upon Exhibit G, Heritage and Contractor anticipate that the renewal premium commencing April 28, 2005 will not exceed \$54,500 and Heritage agrees to reimburse Contractor for such additional premium within ten (10) days after receipt of Contractor's invoice evidencing payment of the additional premium to cover the period from April 28, 2005 through September 30, 2005. With respect to years two through five of this Agreement, Contractor, through its professional insurance consultants and brokers (subject to the reasonable approval of Heritage), shall competitively bid for the Excess Coverage under this Agreement and provide copies of the competitive bids to Heritage at least twenty (20) days prior to the commencement of each year. The bids shall include Excess Coverage in increments of \$5,000,000 from \$10,000,000 to \$50,000,000, together with premium quotes for each level of insurance. Heritage shall have the option of selecting the amount of Excess Coverage for each year of this Agreement by written notice to Contractor. Heritage shall reimburse Contractor for the corresponding premium in accordance with the terms of this Article 7

8. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Heritage, Heritage Property Investment Trust, Inc., Owner(s), General Partner(s) of the Owner(s), and their respective agents, officers, trustees, shareholders, employees, servants, members, partners, tenants, successors and assigns from and against any and all claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, costs and expenses, including reasonable attorneys fees, investigative fees and consulting fees on account of bodily injury, sickness, disease, or death sustained or alleged by any person or persons, personal injury sustained or alleged by any person or persons and/or damage to or destruction or any property (including loss of use thereof) directly or indirectly arising out of or resulting from or in any way connected with or related to Operations, attempted Operations, failure to perform Operations, completed Operations or the work of any Subcontractor, whether or not due or claimed to be due in whole or in part to the active, passive or concurrent negligence or fault of a party indemnified hereunder and/or any other person or persons, and whether or not the performance of Operations, attempted performance of Operations or failure to perform Operations shall be in accordance with or in violation of the provisions of this Contract and/or the obligations with respect to Operations and whether or not such claims, demands, suits or proceedings are just, unjust, groundless, false or fraudulent; and Contractor shall and does hereby assume and agrees to pay for the defense of all such claims, demands, suits and proceedings, provided, however, that the Contractor shall not be required to indemnify Heritage, Heritage Property Investment Trust, Inc., Owner(s), General Partner(s) of the Owner(s), their respective agents, officers, directors, trustees, shareholders, employees, servants, members, partners, tenants, successors, and assigns against any such damages occasioned solely by the negligent acts or omissions of Heritage, Heritage Property

Investment Trust, Inc., Owner(s), or General Partner(s) of the Owner(s). If any action or proceeding is brought against any party indemnified hereunder by reason of any such claim, demand, suit or proceeding, Contractor, upon notice, shall at Contractor's expense, resist or defend such claim, demand, action, suit or proceeding by counsel reasonably acceptable to the indemnified party.

If for any reason any part of this Indemnification shall be in contravention of any statute, ordinance, regulation or rule, or any decision of any court or adjudicatory body, then this Indemnification provision shall survive to the fullest extent permitted thereby.

Contractor hereby acknowledges its obligations under the foregoing paragraph to assume the cost of defending, indemnifying and holding harmless Heritage, Heritage Property Investment Trust, Inc., Owner(s), General Partner(s) of the Owner(s) and their respective agents, officers, directors, trustees, shareholders, employees, servants, members, partners, tenants, successors and assigns from and against all claims, demands, suits and proceedings as described in this Indemnification. It is understood and agreed that Contractor is an independent contractor. Contractor agrees to indemnify and hold Heritage, Heritage Property Investment Trust, Inc., Owner(s), General Partner(s) of the Owner(s) and their respective agents, officers, directors, trustees, shareholders, employees, servants, members, partners, tenants, successors and assigns harmless from any and all liability whatsoever in any connection with Operations performed or to be performed, regardless of fault, and Contractor shall be solely responsible for any such claims.

Contractor acknowledges receipt of consideration for the undertakings in this Contract, including this Section 8.

9. **CHANGES IN OPERATIONS:** Heritage may order Changes in Operations within the general scope of this Contract consisting of additions, deletions or other revisions. The Contract Price shall be adjusted after a written Change Order is approved and signed by Heritage and Contractor.

10. **CONFLICTS:** In the event of a conflict between the terms of the Contract and the terms of any acceptance order issued by Contractor and/or Contractor's bid proposal or any other documents, the terms and conditions of this Contract shall control.

11. **CONTRACTOR'S ACKNOWLEDGMENT:** Contractor expressly agrees that in the event of any claims by an employee of Contractor, an employee of Contractor's Subcontractors or Suppliers, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable against Heritage, Heritage Property Investment Trust, Inc., Owner(s), General Partner(s) of the Owner(s) and/or any parent, affiliated or subsidiary entity, company, corporation, partnership, limited partnership, limited liability company, partners, officers, directors, trustees, shareholders, employees, members, agents, tenants, successors and/or assigns (hereinafter referred to in this paragraph collectively as "HERITAGE"), Contractor acknowledges that its indemnification and contribution obligations, pursuant to the Contract or otherwise, shall not be limited in any way by any amount or type of damages, compensation or benefits

to in this paragraph collectively as "HERITAGE"), Contractor acknowledges that its indemnification and contribution obligations, pursuant to the Contract or otherwise, shall not be limited in any way by any amount or type of damages, compensation or benefits payable by or for Contractor, its Insurer(s) or any of its Subcontractors or Suppliers or their Insurer(s) under workers' compensation acts, disability benefit acts or other employee benefit acts. Contractor further expressly agrees that in the event of a claim by an employee of Contractor or an employee of Contractor's Subcontractors or Contractor's Suppliers against HERITAGE, Contractor acknowledges that, notwithstanding any federal, state or local laws, ordinances, acts, including worker's compensation acts, including the New York Omnibus Worker's Compensation Reform Act signed into law on September 16, 1996, disability acts, employee benefits acts or otherwise, Contractor expressly agrees to permit a claim for contribution and/or indemnification by HERITAGE against Contractor.

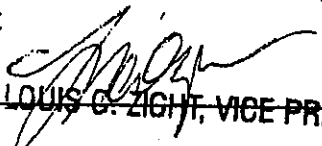
Contractor acknowledges receipt of consideration for the undertakings in this Contract, including this Section 11.

12. **CONTRACTOR'S INSPECTOR:** By submitting a bid, Contractor acknowledges that Contractor has examined the Property(ies), including all areas outlined in Paragraph VI of Exhibit C of this Contract and found the Property(ies) in good order and condition and that there are no special conditions or defects of any kind which would prevent the property and complete performance of Operations and obligations under this Contract.
13. **ASSIGNMENT:** Contractor agrees not to assign or otherwise convey any interest or rights under this Contract without the prior written consent of Heritage which may be withheld in its sole discretion.
14. **TAXES AND LICENSES:** Contractor shall pay all governmental taxes, excises and/or any other charges and license fees that are required to be paid in connection with Operations.
15. **TITLE AND WARRANTY:** Contractor warrants that all material, equipment and services to be provided by Contractor under this Contract shall be free from defects in title, labor, material or fabrication; conform to applicable specifications, drawings, samples or other descriptions given; be suitable for the purpose intended; be of merchantable quality and free from defects in design. Contractor warrants that the materials and equipment supplied under this Contract are fit for the purposes for which they are intended to be used and otherwise conform to the specifications required by this Contract. Contractor, at its sole cost and expense, agrees to replace, install or correct promptly any material, equipment or services not conforming to the foregoing requirement upon receipt of notice from Heritage. In the event Contractor fails to correct or replace any material, equipment or services as required, Heritage may correct any such deficiency and charge Contractor the costs thereof or deduct the cost thereof from payments that would otherwise be due to Contractor.

17. TERMINATION: Heritage shall have the right to terminate this Agreement by giving Contractor ten (10) days written notice in the following events: (a) Contractor is in default with respect to any of its obligations under this Agreement; (b) if any property or properties covered by this Contract are scheduled to be sold; (c) without any cause whatsoever, provided, in all such events, Heritage shall pay Contractor for all work or services performed and equipment and materials supplied to the date of termination. In the event Heritage terminates this Agreement for cause as set forth in subsection (a), Contractor hereby automatically assigns and conveys its interest under all Subcontracts to Heritage and Heritage shall have the right to assume Contractor's position with respect to all Subcontracts and to require performance of the Subcontracts by the Subcontractors, in accordance with the provisions of each of the Subcontracts. Contractor agrees not to modify Section 44 of the Subcontract or any of the terms of the Subcontracts in any way which would diminish Heritage's rights thereunder.

AGREED AND ACCEPTED BY:

HERITAGE REALTY MANAGEMENT, INC.
Managing Agent

By: 
LOUIS C. ZICHT, VICE PRESIDENT

Title: _____

Date: 10/12/04

CONTRACTOR:

JOHN ALLIN, d/b/a ALLIN COMPANIES, d/b/a SNOW MANAGEMENT GROUP

JOHN ALLIN

Date:  10-4-04

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<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA</p> <p>HERITAGE REALTY MANAGEMENT, : INC., : Plaintiff : vs. : CASE NO. CA 04-333 ERIE JOHN ALLIN d/b/a ALLIN : JUDGE SEAN MCLAUGHLIN COMPANIES, : Defendant :</p> <p>Deposition of JOHN ALLIN, taken before and by Carol A. Holdnack, RPR, Notary Public in and for the Commonwealth of Pennsylvania, on Monday, January 23, 2006, commencing at 9:02 a.m., at the offices of Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501.</p> <p>For the Plaintiff:</p> <p>Richard A. Lanzillo, Esq. Knox McLaughlin Gornall & Sennett, P.C. 120 West Tenth Street Erie, PA 16501 Kristina L. Angus, Esq. Heritage Property Investment Trust, Inc. 131 Dartmouth Street Boston, MA 02116</p> <p>For the Defendant:</p> <p>Craig A. Markham, Esq. Elderkin Martin Kelly & Messina 150 East Eighth Street Erie, PA 16501</p> <p style="text-align: right;">Reported by Carol A. Holdnack, RPR Ferguson & Holdnack Reporting, Inc.</p>	<p>1 JOHN ALLIN, first having been 2 duly sworn, testified as follows: 3 4 DIRECT EXAMINATION 5 BY MR. LANZILLO: 6 7 Q. Mr. Allin, my name is Rich Lanzillo. I represent 8 Heritage Realty in this lawsuit. I'm going to be asking you 9 a series of questions today regarding the basis for the 10 lawsuit. Both my questions and your responses will be taken 11 down by our court reporter, Carol. To ensure that the 12 transcript is clear, there are a couple of basic ground 13 rules you and I will need to keep in mind. 14 First, it's important that we don't talk at the 15 same time. So if you would wait until I finish my question 16 before attempting to respond to it, and I'll wait until you 17 finish your response before I ask you my next question. 18 That will make Carol's job a bit easier. 19 If you need a break during the deposition, just 20 let us know. Most importantly, if at any time you do not 21 hear my question or do not understand it, I need you to tell 22 me that so that I can either repeat or rephrase the 23 question. If you respond to my question, I will assume that 24 you both heard it and understood it. Is that fair enough? 25 A. Yes.</p>
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<p style="text-align: center;">I N D E X</p> <p>1 2 3 JOHN ALLIN 4 Direct Examination by Mr. Lanzillo 3 5 6 EXHIBITS: 7 J. Allin Deposition Exhibit 1 47 8 J. Allin Deposition Exhibit 2 48 9 J. Allin Deposition Exhibit 3 49 10 J. Allin Deposition Exhibit 4 51 11 J. Allin Deposition Exhibit 5 51 12 J. Allin Deposition Exhibit 6 52 13 J. Allin Deposition Exhibit 7 77 14 J. Allin Deposition Exhibit 8 79 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 Q. Would you state your full name and your address. 2 A. John A. Allin, A-L-L-I-N. Home address is 2319 3 South Shore Drive, Erie 16505. 4 Q. And you're married to Peggy Allin? 5 A. Yes. 6 Q. And Mrs. Allin is here at the end of the table 7 with us today in the deposition room, correct? 8 A. Yes. 9 MR. LANZILLO: All right. Mrs. Allin will be 10 testifying today pursuant to which of our notices, 11 the notice directly to her or the corporate 12 designee notice, Craig? 13 MR. MARKHAM: I think directly to her. I mean, 14 some of the information you're asking for is 15 overlapped principally between Mr. and Mrs. Allin. 16 Mr. Allin -- well, it depends on the area of 17 inquiry. But, principally, her individual 18 deposition notice is why she's here. 19 Q. Okay. Are you currently employed? 20 A. Yes. 21 Q. And how are you employed? 22 A. I am employed by Snow Dragon, LLC in Euclid, Ohio. 23 Q. And what is the nature of the business of Snow 24 Dragon, LLC? 25 A. It manufactures and markets and sells snow melting</p>

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<p>1 equipment.</p> <p>2 Q. What's your position with Snow Dragon?</p> <p>3 A. I am the president.</p> <p>4 Q. Are you also an owner, or a member?</p> <p>5 A. I have an equity position in that company, yes.</p> <p>6 Q. Are you the majority?</p> <p>7 A. No. I'm sorry, I should wait until you finish.</p> <p>8 Q. Are you the majority equity holder of that entity?</p> <p>9 A. No.</p> <p>10 Q. What percentage do you own?</p> <p>11 A. 20 percent.</p> <p>12 Q. How long have you been employed as the president</p> <p>13 of Snow Dragon?</p> <p>14 A. One week.</p> <p>15 Q. How long have you been a part owner of Snow</p> <p>16 Dragon?</p> <p>17 A. One week.</p> <p>18 Q. How were you employed prior to joining Snow</p> <p>19 Dragon?</p> <p>20 A. I was employed by Symbiot Business Group.</p> <p>21 Q. Was that as their corporate vice president of</p> <p>22 operations?</p> <p>23 A. That's correct.</p> <p>24 Q. How long did you hold that position?</p> <p>25 A. 13 months.</p>	<p>1 A. It was a sole proprietorship.</p> <p>2 Q. It would be your sole proprietorship?</p> <p>3 A. That's correct.</p> <p>4 Q. Does your wife have an ownership interest in that</p> <p>5 entity?</p> <p>6 A. No.</p> <p>7 Q. The nature of the business of Allin Companies, as</p> <p>8 I understand it, included snow removal services, landscape</p> <p>9 contracting; is that correct? And was there any other</p> <p>10 aspect to the business?</p> <p>11 A. That's correct. We also built decks, did</p> <p>12 irrigation, installation and maintenance for lawns.</p> <p>13 Q. As far as the breakdown of the different aspects</p> <p>14 of Allin Companies business, could you give me an estimate</p> <p>15 of how much of your work was devoted to landscape</p> <p>16 contracting, versus snow removal, versus irrigation, versus</p> <p>17 decks?</p> <p>18 A. Including the work that was done by the sole</p> <p>19 proprietor known as Snow Management Group, 10 percent of the</p> <p>20 work was landscape, the balance was snow.</p> <p>21 Q. So I take it that a very small portion of the</p> <p>22 business was devoted to irrigation and decks?</p> <p>23 A. Yes.</p> <p>24 Q. Roughly 90 percent would have been snow removal?</p> <p>25 A. Correct.</p>
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<p>1 (Discussion held off the record.)</p> <p>2 Q. You joined Symbiot as its corporate vice president</p> <p>3 of operations at the time that either the business of Snow</p> <p>4 Management Group or the assets of Snow Management Group were</p> <p>5 sold to Symbiot; is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. When did that transaction take place, the sale</p> <p>8 to --</p> <p>9 A. The closing was November 22nd.</p> <p>10 Q. Of '04?</p> <p>11 A. That's correct.</p> <p>12 Q. Do you still conduct business as John Allin doing</p> <p>13 business as Allin Companies?</p> <p>14 A. No.</p> <p>15 Q. When did you cease to do business as Allin</p> <p>16 Companies?</p> <p>17 A. Allin Companies -- what was left after the Symbiot</p> <p>18 acquisition was landscape contracting, and that was acquired</p> <p>19 by an entity out of Ohio.</p> <p>20 Q. What's the name of that entity?</p> <p>21 A. Yardmaster, Inc.</p> <p>22 Q. And when did that occur?</p> <p>23 A. April 15th, '05.</p> <p>24 Q. Allin Companies, is that a proprietorship,</p> <p>25 partnership, LLC, corporate entity, when it was in business?</p>	<p>1 Q. What was the principal place of business of Allin</p> <p>2 and Companies when it was in operation?</p> <p>3 A. 1406 West 21st Street, Erie 16502.</p> <p>4 Q. Did Allin and Companies, including any of the, for</p> <p>5 lack of a better term, divisions of Allin Companies maintain</p> <p>6 any other places of business other than the 21st Street</p> <p>7 address?</p> <p>8 A. No.</p> <p>9 Q. Did Snow Management ever have a place of business</p> <p>10 or an address located in Essex, Connecticut?</p> <p>11 A. Essex, Connecticut would have been the location of</p> <p>12 one of our employees.</p> <p>13 Q. And who was that?</p> <p>14 A. Jeffrey Vernon.</p> <p>15 Q. What was Mr. Vernon's position?</p> <p>16 A. He was in charge of sales and production.</p> <p>17 Q. Was he a vice president?</p> <p>18 A. Yes, we had that title.</p> <p>19 Q. How long was Mr. Vernon employed by you?</p> <p>20 A. Sometime in late spring 2002 until we sold the</p> <p>21 company.</p> <p>22 Q. Till November of '04?</p> <p>23 A. Correct.</p> <p>24 Q. Did he work principally in the snow removal part</p> <p>25 of the business or did he also do anything with landscape</p>

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<p>1 contracting?</p> <p>2 A. He was responsible only for snow.</p> <p>3 Q. What were his job responsibilities? I think you</p> <p>4 mentioned he was involved in marketing or sales.</p> <p>5 A. Sales. And he oversaw all of the field managers.</p> <p>6 Q. What was the function of the field managers?</p> <p>7 A. Field managers had specified regions that they</p> <p>8 were responsible for overseeing the snow removal on specific</p> <p>9 sites within that region.</p> <p>10 Q. So he was both on the operational side and on the</p> <p>11 sales side of the business?</p> <p>12 A. That's correct, although his operational</p> <p>13 responsibilities were in the field, not here in the office.</p> <p>14 Q. Was he involved in the subcontracting portion of</p> <p>15 the business?</p> <p>16 A. To a certain extent, yes.</p> <p>17 Q. What were his job responsibilities in that area?</p> <p>18 A. In certain instances he would interview and hire</p> <p>19 subcontractors to work on various sites. But he was not</p> <p>20 hiring all the subcontractors on all the sites.</p> <p>21 Q. What would determine whether Mr. Vernon would get</p> <p>22 involved in the interviewing and hiring process?</p> <p>23 A. The geographic region. He took responsibility for</p> <p>24 the area that was immediately surrounding his residence.</p> <p>25 Q. Okay. What was the range that he covered as far</p>	<p>1 Q. And he received a commission of what percentage?</p> <p>2 A. I don't recall. I would have to review his</p> <p>3 employment agreement.</p> <p>4 Q. He did have a written employment agreement?</p> <p>5 A. He did.</p> <p>6 Q. He did not stay on when Symbiot purchased the</p> <p>7 company?</p> <p>8 A. That's not correct.</p> <p>9 Q. Okay. I see. He became a direct employee of</p> <p>10 Symbiot at that point.</p> <p>11 A. That's correct.</p> <p>12 Q. When did he cease to be -- of course, I'm talking</p> <p>13 about Mr. Vernon now. When did Mr. Vernon cease to be an</p> <p>14 employee of Symbiot sometime in the summer of 2005? Did he</p> <p>15 resign? Was he terminated? Do you know the circumstance</p> <p>16 surrounding his departure from Symbiot?</p> <p>17 A. It's my understanding he did resign.</p> <p>18 Q. Where is he now?</p> <p>19 A. Today?</p> <p>20 Q. Generally. Is he living in Connecticut still?</p> <p>21 A. Yes, he is still living in Connecticut.</p> <p>22 Q. When is the last time you had any contact with</p> <p>23 Mr. Vernon?</p> <p>24 A. Last week.</p> <p>25 Q. Do you still conduct business with him in any</p>
Page 10	Page 12
<p>1 as his interviewing and hiring of subcontractor</p> <p>2 responsibilities?</p> <p>3 A. There was a regional field manager that lived</p> <p>4 fairly close to him, and he would assist that individual.</p> <p>5 He wouldn't have total responsibility. In some cases he</p> <p>6 would go as far away as New Jersey, depending upon the scope</p> <p>7 of work and the intricacy of the site.</p> <p>8 Q. Would you have been Mr. Vernon's direct</p> <p>9 supervisor?</p> <p>10 A. Yes.</p> <p>11 Q. And when I refer to employees of Allin and</p> <p>12 Companies, am I correct that I'm really talking about your</p> <p>13 employees since you were a proprietorship?</p> <p>14 A. That's correct.</p> <p>15 Q. And Mr. Vernon's compensation, how was it</p> <p>16 determined? Was it hourly, salary?</p> <p>17 A. He was paid --</p> <p>18 Q. -- commission?</p> <p>19 A. -- a salary plus a draw against commission.</p> <p>20 Q. What were the terms of his draw against</p> <p>21 commission?</p> <p>22 A. We paid him a draw. And then once a year we were</p> <p>23 to reconcile against commissions that he would be owed.</p> <p>24 Q. What was his draw amount?</p> <p>25 A. 52,000 per year.</p>	<p>1 regard?</p> <p>2 A. No.</p> <p>3 Q. Have you discussed this case or your deposition</p> <p>4 with Mr. Vernon since he left Symbiot?</p> <p>5 A. We have had discussion about Heritage. We have</p> <p>6 had no discussion about the deposition today.</p> <p>7 Q. What was the nature of the discussion regarding</p> <p>8 Heritage?</p> <p>9 A. Asking him if he had any documentation that we</p> <p>10 could supply to our attorneys.</p> <p>11 Q. What did he tell you?</p> <p>12 A. He supplied us with what he had, although it was</p> <p>13 my understanding he had a corrupted hard drive that he could</p> <p>14 not get into.</p> <p>15 Q. What did he provide you with as far as written</p> <p>16 documentation? Was he able to give you anything at all?</p> <p>17 A. I don't know.</p> <p>18 Q. Was it transmitted through you, Mr. Allin, or</p> <p>19 directly to Attorney Markham?</p> <p>20 A. I don't know if anything has been given directly</p> <p>21 to Attorney Markham. But it would have come through our</p> <p>22 office to the law firm we initially retained.</p> <p>23 Q. That was the --</p> <p>24 A. They were over in the Cleveland area.</p> <p>25 Q. Would it be fair to say that, to your knowledge,</p>

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<p>1 Mr. Vernon did not have any time records as far as his</p> <p>2 activities relative to Heritage?</p> <p>3 A. I don't know that.</p> <p>4 Q. Are you aware of any time records that he had? I</p> <p>5 understand you don't know whether he had them and what he</p> <p>6 may have provided through others. But to your personal</p> <p>7 knowledge, have you ever seen any time records that were</p> <p>8 purportedly supplied by Mr. Vernon?</p> <p>9 A. I have not.</p> <p>10 Q. Mr. Vernon told you that he had a corrupted hard</p> <p>11 drive on his computer that prevented him from generating</p> <p>12 information that he thought he might otherwise be able to</p> <p>13 provide?</p> <p>14 A. That's correct.</p> <p>15 Q. And when did he tell you that?</p> <p>16 A. Sometime in the last month to six weeks.</p> <p>17 Q. About how many individuals were employed by Allin</p> <p>18 Companies, by you, prior to the acquisition by Symbiot?</p> <p>19 A. The number would fluctuate depending upon the time</p> <p>20 of year.</p> <p>21 Q. What's the range?</p> <p>22 A. Anywhere from 30 to 75, depending upon how many</p> <p>23 temps were working at the call center and things of that</p> <p>24 nature.</p> <p>25 Q. Would it be accurate for me to conclude that</p>	<p>1 Q. What were the others, other responsibilities?</p> <p>2 A. Take calls from customers who required additional</p> <p>3 service or callback service.</p> <p>4 Q. Anything else?</p> <p>5 A. They would make the outbound call to a service</p> <p>6 provider to dispatch them to that particular site to address</p> <p>7 the issue that may have arisen.</p> <p>8 Q. And approximately how many of the 30 to 75</p> <p>9 employees would be devoted to the call center?</p> <p>10 A. I can't answer that. I could if I would [sic].</p> <p>11 Q. Was the call center 24 hours?</p> <p>12 A. Certain times of the year, yes.</p> <p>13 Q. And, typically, what would the staffing be, say,</p> <p>14 in the winter months? Would there be one person in the call</p> <p>15 center, five people in the call center?</p> <p>16 A. It would vary depending upon the severity of the</p> <p>17 winter and the prediction of snow in various markets.</p> <p>18 Q. Of the -- well, let me ask you this. The 30 to 75</p> <p>19 employees -- and I know that their identities changed during</p> <p>20 the course of the year. But would those folks be</p> <p>21 responsible for the snow removal side and other aspects of</p> <p>22 the business such as landscape contracting?</p> <p>23 A. In the numbers I gave you, that's correct.</p> <p>24 Q. And when the numbers would swell to 75 in the</p> <p>25 winter, those additional employees, would they be working</p>
Page 14	Page 16
<p>1 during the winter months your employee ranks would increase</p> <p>2 and then during the summer they would decrease?</p> <p>3 A. That would be accurate.</p> <p>4 Q. You mentioned a call center. What's that?</p> <p>5 A. It is a room in the building where people answer</p> <p>6 phones, reports from various service providers, requests</p> <p>7 from customers, and dispatching of service providers to</p> <p>8 customer locations as or if needed.</p> <p>9 Q. So as the snow would be falling in a particular</p> <p>10 locale there might be a call from a client or customer, it</p> <p>11 would come in through your call center. And then your call</p> <p>12 center would contact the service provider. Is that the</p> <p>13 basic routine?</p> <p>14 A. That's not generally how it happened, but that</p> <p>15 could happen from time to time.</p> <p>16 Q. Generally, what would happen at the call center?</p> <p>17 What would the nature of the calls that would come into the</p> <p>18 center encompass?</p> <p>19 A. If you plowed a site, you would call us to report</p> <p>20 that you had performed service, and we would keep record of</p> <p>21 that.</p> <p>22 Q. I see. So the call center's principal function,</p> <p>23 if I'm following you correctly, was to monitor the</p> <p>24 performance of services by your subcontractors?</p> <p>25 A. That was one of the responsibilities.</p>	<p>1 primarily on the snow removal aspect of the business? That</p> <p>2 seems reasonable.</p> <p>3 A. Yes.</p> <p>4 Q. In that range, 30 to 75 employees, was that fairly</p> <p>5 typical over the last several years prior to the sale to</p> <p>6 Symbiot, or did that range grow over time?</p> <p>7 A. It grew over time.</p> <p>8 Q. I take it the snow removal aspect of your business</p> <p>9 has grown for a number of years prior to the merger -- or</p> <p>10 excuse me, the sale?</p> <p>11 A. Yes.</p> <p>12 Q. Other than Mr. Vernon, who was apparently based in</p> <p>13 Connecticut, did you have any employees based in other</p> <p>14 locations prior to the sale of -- I assume it was a sale of</p> <p>15 assets; I'll get to that in a minute -- but prior to the</p> <p>16 transaction with Symbiot?</p> <p>17 A. Yes.</p> <p>18 Q. Where were your other employees based?</p> <p>19 A. In various locations. This list may not be</p> <p>20 all-inclusive.</p> <p>21 Q. Give me your best recollection, please.</p> <p>22 A. Two to three in New Jersey. One in Massachusetts.</p> <p>23 Two or three in Connecticut. Two or three in New York. One</p> <p>24 in Iowa. One in Minneapolis. One in Chicago. That may not</p> <p>25 be all-inclusive.</p>

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<p>1 Q. Of the ones that you were able to recall, were</p> <p>2 these employees of yours at the time that you executed the</p> <p>3 agreement with Heritage Realty Management? In other words,</p> <p>4 were they already existing employees or did you add any of</p> <p>5 these folks at the time of the contract?</p> <p>6 MR. MARKHAM: At the time he signed it, you mean?</p> <p>7 MR. LANZILLO: Um-hum.</p> <p>8 Q. At or after the time you signed it.</p> <p>9 A. Three were hired after the signing. The balance,</p> <p>10 to the best of my recollection, were already on staff.</p> <p>11 Q. And who were the three employees who were signed</p> <p>12 at or after the execution of the contract with Heritage?</p> <p>13 A. Duane.</p> <p>14 Q. Could you give --</p> <p>15 A. Dave.</p> <p>16 Q. I know who Duane is from reading the documents,</p> <p>17 but for the record could you give his name, full name,</p> <p>18 please.</p> <p>19 A. No. If you've read the documents, you understand</p> <p>20 why.</p> <p>21 Q. Yeah.</p> <p>22 A. It's Haataja. And you can guess at the spelling.</p> <p>23 MR. LANZILLO: I'll give it to you.</p> <p>24 H-A-A-T-A-J-A.</p> <p>25 Q. And Dave, is that last name D-Z-I-U-B-A-N?</p>	<p>1 Q. Okay. And the three individuals, Duane, Dave, and</p> <p>2 I believe the other one was Bryan, where was each based?</p> <p>3 A. I don't know the exact cities that they lived in.</p> <p>4 Dave Dzluban was in the Chicago-land area. Duane was in the</p> <p>5 Minneapolis vicinity. Bryan was in Des Moines, I think.</p> <p>6 Q. Were those areas where you had previously done any</p> <p>7 business or were these brand new sites for you?</p> <p>8 A. Brand new sites, Heritage sites.</p> <p>9 Q. Do you have any employment records for these</p> <p>10 individuals showing precisely what they were paid?</p> <p>11 A. I do not. The company would have.</p> <p>12 Q. The company does. And I say the company, I guess</p> <p>13 they're your business records, correct?</p> <p>14 A. Correct.</p> <p>15 Q. There are business records that would show either</p> <p>16 1099 wages or W-2 wages.</p> <p>17 A. We followed the laws of the land, and a W-2 would</p> <p>18 have been issued for them.</p> <p>19 Q. I'm not trying to trick you. I don't know what --</p> <p>20 whatever it is, those records still exist?</p> <p>21 A. We played by the rules, and, yes, they would still</p> <p>22 exist.</p> <p>23 Q. Did these individuals continue as employees after</p> <p>24 Heritage terminated the contract?</p> <p>25 A. They were terminated approximately one week after</p>
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<p>1 A. That's correct.</p> <p>2 Q. Anyone else? There was a third person.</p> <p>3 A. Yeah, there is a third individual, and I cannot</p> <p>4 recall his name.</p> <p>5 Q. Was it Bryan Rohe, R-O-H-E?</p> <p>6 A. That sounds correct.</p> <p>7 Q. And these are individuals who prior to the</p> <p>8 contract with Heritage had not ever provided any services to</p> <p>9 or through Allin Companies?</p> <p>10 A. That's correct. Some other individuals were</p> <p>11 hired, but we were anticipating that they would have</p> <p>12 other -- or responsibilities for other customers other than</p> <p>13 Heritage. An example would be the fellow in Massachusetts.</p> <p>14 He was not hired solely for the Heritage contract. He</p> <p>15 was -- it was anticipated that Heritage become part of his</p> <p>16 portfolio.</p> <p>17 Q. How were the three employees hired after the</p> <p>18 Heritage contract to be compensated, or how were they</p> <p>19 compensated? Salary, hourly, commission?</p> <p>20 A. I believe that they were paid a salary, and</p> <p>21 incentivized in some fashion.</p> <p>22 Q. And the incentives would be what?</p> <p>23 A. To secure additional sites for us to maintain</p> <p>24 around the -- or within the immediate vicinity of the</p> <p>25 Heritage portfolio.</p>	<p>1 the Heritage termination.</p> <p>2 Q. By these employees, I'm referring to the three we</p> <p>3 have been discussing.</p> <p>4 A. That's correct.</p> <p>5 Q. So they would have been employees for a very short</p> <p>6 period of time.</p> <p>7 A. That's correct.</p> <p>8 Q. They were hired after the execution of the</p> <p>9 contract, which I believe was October -- the contract is</p> <p>10 dated October 12th. And I know that the signature date is a</p> <p>11 little different for each of the parties. There's an</p> <p>12 Exhibit A; I believe it's from the Complaint. For the</p> <p>13 record, I've showed you a document that was previously</p> <p>14 marked as Exhibit A. I believe that comes from either the</p> <p>15 pleadings or perhaps from a motion filed earlier in this</p> <p>16 case.</p> <p>17 Am I correct, Mr. Allin, this is a copy of the</p> <p>18 contract dated October 12, 2004 between Heritage Realty</p> <p>19 Management and you, without exhibits?</p> <p>20 A. It appears to be that, yes.</p> <p>21 Q. And it appears that the contract is dated</p> <p>22 October 12, 2004. And it's dated with your signature on the</p> <p>23 last page, Page 8, October 4, 2004?</p> <p>24 A. Yes.</p> <p>25 Q. Is that your signature and handwriting on the last</p>

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<p>1 page?</p> <p>2 A. It is.</p> <p>3 Q. Am I reading that correctly? It says John A.</p> <p>4 Allin, 10/4/04, with changes in red?</p> <p>5 A. That's what it says.</p> <p>6 Q. All right. So going back to these three employees</p> <p>7 who were hired after the execution of this contract. It's</p> <p>8 your testimony that each was hired after October 4, '04 and</p> <p>9 then terminated within approximately one week following</p> <p>10 Heritage's termination of the agreement on November 4, 2004;</p> <p>11 Is that correct?</p> <p>12 A. No.</p> <p>13 Q. How am I incorrect in that summary?</p> <p>14 A. I do not know their exact dates of employment.</p> <p>15 Q. Is it possible that some were hired prior to the</p> <p>16 execution of the agreement?</p> <p>17 A. It's possible it's snowing outside now, but I</p> <p>18 don't know that for a fact.</p> <p>19 Q. That's something we could ascertain from the</p> <p>20 business employment records that you still maintain?</p> <p>21 A. I believe so, yes. And so we're clear, I do need</p> <p>22 to add one thing. Dave Dziuban was not terminated. We kept</p> <p>23 him.</p> <p>24 Q. How long did Mr. Dziuban remain with Allin?</p> <p>25 A. He was there when it was sold to Symbiot and for a</p>	<p>1 Company?</p> <p>2 A. That's it.</p> <p>3 Q. And those firms, Kramer Smith and Schaffner</p> <p>4 Knight, they worked for the business, they did accounting</p> <p>5 work for the business, as well as any personal accounting</p> <p>6 matters that you had; is that accurate?</p> <p>7 A. Yes.</p> <p>8 Q. All right. The actual removal of snow by -- and</p> <p>9 I'm going to call it SMG for ease, Snow Management Group.</p> <p>10 Fair enough?</p> <p>11 A. Yes.</p> <p>12 Q. The actual removal of snow by SMG, was that</p> <p>13 performed solely through subcontractors, or did you do some</p> <p>14 of that yourself?</p> <p>15 A. 99 percent of it would have been done with</p> <p>16 subcontractors. That was the model.</p> <p>17 Q. Did SMG have snow moving and removal equipment</p> <p>18 that it owned, that you owned personally?</p> <p>19 A. Yes.</p> <p>20 Q. What types of equipment did you own?</p> <p>21 A. Skid steers, snow pushers, which are essentially</p> <p>22 large plows, box plows. Trucks with plows on them, and salt</p> <p>23 spreaders. Some specialized equipment, meaning ATVs with</p> <p>24 plows and salt spreaders on them for clearing sidewalks.</p> <p>25 Power brooms, both walk-behind and mechanized. There could</p>
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<p>1 period of time thereafter.</p> <p>2 Q. Who was Allin Companies/Snow Management Group's</p> <p>3 accountant and auditor? Who did the accounting work for</p> <p>4 you?</p> <p>5 A. I'm not sure I understand what you're asking me.</p> <p>6 Q. Did your business have an accounting firm?</p> <p>7 A. We did. And it was right about in that time frame</p> <p>8 that we changed accounting firms.</p> <p>9 Q. Who was your prior firm prior to the change?</p> <p>10 A. Kramer Smith and Bish.</p> <p>11 Q. I'm not familiar with them. Are they in town?</p> <p>12 A. 712 Kahkwa.</p> <p>13 Q. And who was the successor to Kramer Smith and</p> <p>14 Bish?</p> <p>15 A. I don't know the name of the firm. I can't</p> <p>16 remember it. But if I heard it, I would know it.</p> <p>17 Q. Is it an Erie firm?</p> <p>18 A. Yes.</p> <p>19 Q. Does that firm remain your personal accountant</p> <p>20 today?</p> <p>21 A. Yes.</p> <p>22 Q. Is it one of the larger firms?</p> <p>23 A. Yeah. Dennis Grow is doing our taxes in that</p> <p>24 firm. They're at -- I think they're at 10th and State.</p> <p>25 Q. That would be Schaffner Knight Minnaugh and</p>	<p>1 be some other minor equipment, but that's the bulk of it.</p> <p>2 Q. Was that equipment situated here in Erie or was it</p> <p>3 spread out in other locations?</p> <p>4 A. Spread out in other locations. A good portion of</p> <p>5 it was located here in Erie and brought back here between</p> <p>6 winter seasons. And some was stored on customer sites and</p> <p>7 at other common areas that we could rent/keep.</p> <p>8 Q. But, again, about 99 percent of the actual snow</p> <p>9 removal work would have been performed by subcontractors?</p> <p>10 As you said, that was the business model?</p> <p>11 A. Yes. However, we would supply snow pushers, skid</p> <p>12 steers, some of the mechanized equipment, for the</p> <p>13 subcontractors to use. The snow pushers themselves, we</p> <p>14 would not traditionally allow a subcontractor to own.</p> <p>15 Q. I see. Did you acquire any new equipment based on</p> <p>16 the Heritage contract?</p> <p>17 A. Yes.</p> <p>18 Q. What did you purchase?</p> <p>19 A. We purchased some more pushers. No, I take that</p> <p>20 back. That's not correct. We did not acquire pushers for</p> <p>21 the Heritage contract. We had enough left over from</p> <p>22 contracts that we did not renew, that we were going to</p> <p>23 relocate that equipment to the Heritage sites.</p> <p>24 Q. So then no new equipment was purchased based on</p> <p>25 the Heritage contract?</p>

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<p>1 A. Trucks for the field managers, they were 2 purchased. Those trucks had plows and salt spreaders on 3 them. 4 Q. Would those be standard pickup-type trucks with 5 some special equipment? 6 A. Three-quarter ton Dodges with D blades and salt 7 spreaders. 8 Q. What happened to those trucks after the 9 termination of the Heritage contract? 10 A. They sat in Erie, doing nothing. 11 Q. Were they sold to Symbiot? 12 A. Yes. 13 Q. And how many trucks did you purchase? 14 A. I purchased six that year, I believe. And they 15 would have been for all the new employees that we hired. 16 There were no replacement trucks. And as I previously 17 stated, some of the employees were hired in markets where 18 the addition of the Heritage sites required additional 19 managerial staffing. But once we lost the Heritage 20 contract, we still had enough work that we thought we could 21 muddle through paying their salaries and keeping them on 22 board. 23 Q. So those new hires in those areas, they were not 24 terminated after the Heritage contract was terminated; you 25 continued with them doing other work?</p>	<p>1 employees, those were independent contractors, I assume; is 2 that correct? 3 A. That is correct. 4 Q. Prior to Heritage, how many clients or customers 5 did you have in the snow removal area? 6 A. I wouldn't -- I would be guessing if I gave you a 7 number. 8 Q. Would it be fair to say hundreds? 9 A. There would have been hundreds of sites. I don't 10 know that there would be hundreds of customers. And it's 11 more like thousands of sites. 12 Q. Okay. Any particular geographic region or all 13 over the country? 14 A. The business was focused predominantly east of the 15 Mississippi. However, that does not mean we did not have 16 customers west of the Mississippi. 17 Q. I assume Florida was probably not a very lucrative 18 market for you. 19 A. Well, it does snow in all 50 states at some point 20 every decade. That's a reasonable assumption. 21 Q. But probably not enough to justify a substantial 22 marketing effort on your behalf. 23 A. That's correct. 24 Q. What's your best recollection, approximately, of 25 the number of subcontractors that you would have in any</p>
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<p>1 A. As I previously stated, there was one in 2 Massachusetts, one in New Jersey. Those people were kept. 3 Q. The six new trucks, then, were any trucks traded? 4 In other words, when you got the six new trucks, were you 5 trading in any older trucks? 6 A. No. 7 Q. And where did you buy those? 8 A. Humes. 9 Q. Humes in Waterford? 10 A. That's correct. 11 Q. Where are those trucks now? Are they with 12 Symbiot? 13 A. That's correct. 14 Q. Are there any business records concerning the 15 purchase of those trucks? Do you have the paperwork on 16 them? 17 A. I believe so. 18 Q. Who would be the custodian of those records? 19 A. Peggy Allin. 20 Q. Other than the trucks that were later sold to 21 Symbiot, any other equipment purchased based upon the 22 Heritage contract? 23 A. Not that I can recall at this time. 24 Q. The subcontractors who did 99 percent of the snow 25 removal work for Allin, were those -- those were not</p>	<p>1 given year? 2 A. It would be under 1,000 and over 200. 3 Q. Okay. 4 A. And that's as close as I can narrow it down. 5 Q. Who within your business was responsible for 6 recruiting and interacting with the subcontractors? 7 A. There's a number of different people that were 8 involved in the direct contact with subcontractors. They 9 would have -- they were all housed in Erie, and would 10 include the field managers that were stationed in the 11 various regions. 12 Q. Who can you recall here in Erie who was 13 responsible for recruiting and maintaining relationships 14 with subcontractors? 15 A. About the only thing I can give you definitive 16 would be the person who was responsible for that department, 17 and that would be Lisa Edwards. 18 Q. Is she still in Erie? 19 A. Yes. 20 Q. Did she go to work for Symbiot after that 21 transaction? 22 A. Yes, she did. 23 Q. When did she cease working for Symbiot? 24 A. It's my understanding she is still working now. 25 Q. She is still working for them. What's left of</p>

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<p>1 what was formally Snow Management Group and is now part of 2 Symbiot's organization here in Erie? I read some articles 3 that there's been a contraction or reshuffling of 4 responsibilities with stuff being transferred over to Salt 5 Lake City.</p> <p>6 A. I have not been in the building in a while. My 7 employment came to an end there December 15th. They have 8 downsized severely and considerably, and I'm probably not 9 the right person to ask that question of.</p> <p>10 Q. Is it your understanding, though, that the 11 principal operations that were here in Erie have since been 12 transferred to Salt Lake?</p> <p>13 A. Not yet, but they're in the middle of 14 transitioning that.</p> <p>15 Q. What were the circumstances surrounding the end of 16 your employment with Symbiot on or about December 15th?</p> <p>17 A. Symbiot felt that I was not meshing with the 18 culture in Salt Lake, and that it would be best if I pursued 19 other endeavors, and I agreed.</p> <p>20 Q. Did you have an employment agreement following the 21 acquisition by Symbiot?</p> <p>22 A. I did.</p> <p>23 Q. And I take it, it was terminable on certain 24 conditions, either party or Symbiot had the right to 25 terminate on notice or upon payment of an amount?</p>	<p>1 we would need to become properly capitalized in order to 2 continue that growth. So there was an effort made to engage 3 either a venture partner or to allow someone to acquire a 4 portion of the business to provide us with the capital that 5 we would need.</p> <p>6 Q. Were you experiencing financial problems in 7 connection with the operation of the Snow Management Group 8 when you started looking for a venture capital partner or a 9 strategic buyer?</p> <p>10 A. No.</p> <p>11 Q. Were you paying debts as they came due?</p> <p>12 A. Yes.</p> <p>13 Q. Did that include debts to your subcontractors?</p> <p>14 A. Yes.</p> <p>15 Q. At any time between February of 2004 when you 16 started looking for a strategic buyer and the date you 17 entered into the Heritage contract, did you fall into 18 arrears with a significant portion of your subcontractors?</p> <p>19 A. We did fall into arrears, but not with a 20 significant portion of our subcontractors. We had thought 21 we had an arrangement to be acquired, and that did not come 22 to fruition. And by the time that had taken place, the 23 original purchaser decided against going through with the 24 agreement. By that point, we had fallen behind by 25 approximately 3.6 million to service providers only. All</p>
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<p>1 A. Yes, that's essentially correct.</p> <p>2 Q. What was the nature of the transaction between you 3 as the proprietor of Snow Management Group and Allin 4 Companies and Symbiot? In other words, was it an asset 5 purchase agreement, was it a -- what was it?</p> <p>6 A. They purchased assets and certain liabilities as 7 it related to the snow business. They did not purchase any 8 landscape, irrigation, deck, any of that work.</p> <p>9 Q. When did that asset purchase occur?</p> <p>10 A. The closing was on November 22nd of '04.</p> <p>11 Q. When did you start negotiating with Symbiot 12 regarding that transaction?</p> <p>13 A. September of '04.</p> <p>14 Q. Had you been looking for a strategic buyer for 15 portions of your business prior to September of '04?</p> <p>16 A. Yes.</p> <p>17 Q. When did those efforts start?</p> <p>18 A. February -- February of '04.</p> <p>19 Q. What prompted you to decide to look for a 20 purchaser of some or all of the business?</p> <p>21 A. We had been growing expedientially since the 22 Olympic project. And we had been growing from cash flow. 23 It became apparent in the winter of '03/'04 that in order to 24 continue to sustain the type of growth that we were 25 experiencing and anticipated, that we would need capital or</p>	<p>1 other debts were paid on time and were current.</p> <p>2 Q. Who was the original anticipated purchaser of the 3 business?</p> <p>4 A. We had had conversations with a number of 5 different individuals and entities. And I had been trying 6 to educate a number of different people about the snow 7 industry. And at the same time I had engaged an engineering 8 firm to design a snow melter that we wanted to use. And 9 that -- the parent company of that entity was interested in 10 acquiring all of SMG.</p> <p>11 Q. Prior to Symbiot, did you have a letter of intent 12 from anyone to purchase the business, or a portion of the 13 business?</p> <p>14 A. I don't know if we ever had an actual letter of 15 intent.</p> <p>16 Q. I may have misinterpreted your testimony a few 17 moments ago, Mr. Allin. But I was under the impression that 18 the discussions were fairly serious with at least one or 19 more potential buyers. Would that be a fair assessment of 20 your testimony?</p> <p>21 A. Yes, sir.</p> <p>22 Q. What was the name of the potential purchasers with 23 which you had serious negotiations?</p> <p>24 A. It was Park Ohio Holdings Company in Cleveland.</p> <p>25 Q. Anyone else?</p>

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<p>1 A. When we began negotiating with Park Ohio, they</p> <p>2 asked us not to have conversations with any other entities,</p> <p>3 and we did not. But there were other interested parties.</p> <p>4 Q. You did fall behind, though, to the tune of</p> <p>5 \$3.6 million to service providers at one point?</p> <p>6 A. That's correct.</p> <p>7 Q. When did that occur?</p> <p>8 A. Over the course of the negotiations with Park</p> <p>9 Ohio.</p> <p>10 Q. Are you implying there was some cause and effect</p> <p>11 to -- between the negotiations on the one hand and the</p> <p>12 falling behind with your service providers?</p> <p>13 A. I don't think they were directly related, no.</p> <p>14 Q. You said earlier that there was a need to raise</p> <p>15 capital based on your growth. Would it be fair for me and</p> <p>16 accurate for me to conclude that you did not have the cash</p> <p>17 flow sufficient to service, at least at one point, \$3.6 in</p> <p>18 debt to your service providers?</p> <p>19 A. That would be accurate.</p> <p>20 Q. Did you at some point retain a workout firm?</p> <p>21 A. After the Park Ohio deal came apart, they</p> <p>22 recommended that -- the CEO of Park Ohio recommended that we</p> <p>23 engage Bob Cohen from Centrus to assist us in going forward</p> <p>24 so that we could continue to concentrate on the business and</p> <p>25 not on the problems that might arise from not being able to</p>	<p>1 Q. Were they made whole, or did they accept -- were</p> <p>2 the service providers required to accept less than full</p> <p>3 payment?</p> <p>4 A. I don't believe the service providers were</p> <p>5 required to do anything. They were asked to accept 75 cents</p> <p>6 on the dollar.</p> <p>7 Q. Did your service providers accept that 75 cents?</p> <p>8 A. Overwhelmingly. The response was positive. And</p> <p>9 all but only a couple gladly accepted it.</p> <p>10 Q. What happened to the service providers who</p> <p>11 declined to accept the 75 cents?</p> <p>12 A. I don't know. That was taken out of my hands.</p> <p>13 But there were -- if there were one or two, that was a lot.</p> <p>14 Q. Did any service provider ever sue you?</p> <p>15 A. We have one who has filed suit against us.</p> <p>16 Q. Which one is that?</p> <p>17 A. Karioty (phonetic), something or other.</p> <p>18 Q. Karioty?</p> <p>19 A. Yeah.</p> <p>20 Q. Where are they based?</p> <p>21 A. Connecticut.</p> <p>22 Q. And how much were they owed?</p> <p>23 A. I don't know.</p> <p>24 Q. Let me ask you a couple questions about the</p> <p>25 structure of the agreement with Symbiot. Did they assume</p>
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<p>1 get a capital infusion in the company.</p> <p>2 Q. I mean, those were existing problems. I mean, at</p> <p>3 the time you had -- well, let me back up. Tell me if this</p> <p>4 statement is correct. When you retained Centrus and Bob</p> <p>5 Cohen, you did not have funds sufficient to pay your service</p> <p>6 contractors; is that accurate?</p> <p>7 A. That's accurate.</p> <p>8 Q. And one of the reasons why you retained Centrus</p> <p>9 was to have Centrus assist you in negotiating some</p> <p>10 accommodation from your service provider creditors?</p> <p>11 A. Centrus' -- Bob Cohen's charge was to assist us on</p> <p>12 a number of fronts.</p> <p>13 Q. What were those fronts?</p> <p>14 A. Getting a capital infusion, a potential buyer or</p> <p>15 investor, to keep the service providers abreast of the</p> <p>16 situation and what was taking place. We didn't have anybody</p> <p>17 who was threatening anything at that point in time. And we</p> <p>18 were doing this as a precursor to any problems that might</p> <p>19 arise.</p> <p>20 Q. When you sold the snow removal business to</p> <p>21 Symbiot, was there some arrangement made for the payment of</p> <p>22 your subcontractors, at least the subcontractors with which</p> <p>23 there was an arrearage?</p> <p>24 A. Symbiot did make arrangements to assume that</p> <p>25 liability and to make the service providers whole.</p>	<p>1 any debt other than the -- some or all of the debt to the</p> <p>2 service providers?</p> <p>3 A. Yes.</p> <p>4 Q. Bank debt, things of that nature, secured debt?</p> <p>5 A. Yes.</p> <p>6 Q. And did they -- did Symbiot assume all of the debt</p> <p>7 to the service providers, or up to a certain amount?</p> <p>8 A. It was written to be up to \$4 million.</p> <p>9 Q. And then was there cash to you as part of that</p> <p>10 deal?</p> <p>11 A. At closing I got \$50,000 that went to my lawyer.</p> <p>12 Q. And nothing beyond that?</p> <p>13 A. That's correct.</p> <p>14 Q. Is there any payout going forward?</p> <p>15 A. I hope so.</p> <p>16 Q. Is there like an earn-out type of arrangement?</p> <p>17 A. Yes.</p> <p>18 Q. And that, obviously, is tied to the performance of</p> <p>19 what was formally SMG and now part of Symbiot?</p> <p>20 A. Yes. However, Symbiot has had some material</p> <p>21 direction change in how they're operating. So it would be</p> <p>22 next to impossible for them to achieve the earn-out goals</p> <p>23 that have been set forth, and we're in the process of</p> <p>24 negotiating that.</p> <p>25 (Discussion held off the record.)</p>

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<p>1 Q. I just made the comment that typically earn-outs 2 are aspirational.</p> <p>3 A. We've kind of figured that out.</p> <p>4 Q. Heritage paid \$340,000 roughly, \$340,482 to you. 5 Where did that money go?</p> <p>6 A. Into the checking account.</p> <p>7 Q. Were those proceeds transferred to Symbiot as part 8 of the transaction?</p> <p>9 A. Well, we had to operate the business up until the 10 closing took place, and we used those funds for that.</p> <p>11 Q. How much was in the checking account at or about 12 the time of the receipt of Heritage's payment?</p> <p>13 A. I don't know.</p> <p>14 Q. How rapidly were the proceeds of Heritage's 15 payment depleted after they were received? Did they go out 16 the door pretty quickly?</p> <p>17 A. I don't know that.</p> <p>18 Q. There certainly would be bank records to show 19 that, would there not?</p> <p>20 A. I would hope so.</p> <p>21 Q. The checking account records.</p> <p>22 A. I would hope so.</p> <p>23 Q. Where did you do your banking? Who had your 24 checking account?</p> <p>25 A. National City.</p>	<p>1 Q. I assume that -- I mean, if you had at one point 2 3.6 million owed to service providers/subcontractors, it 3 sounds that you would have had at least an off year.</p> <p>4 A. '04, yes. '03 was profitable.</p> <p>5 Q. What about existing contracts that were in your 6 name or the names of Allin and Companies or Snow Management 7 Group; how were they handled as part of the Symbiot 8 transaction? Were they assigned, assumed?</p> <p>9 A. Those that had assignment clauses in them were all 10 assigned, and all customers agreed to the assignment. Those 11 that did not have assignment language, they were notified of 12 the transaction, and we had no issues or problems with any 13 of them.</p> <p>14 Q. And when you say that, were those terminated, 15 then, at that point?</p> <p>16 A. No, they were assigned also.</p> <p>17 Q. They consented.</p> <p>18 A. Yes. Some, we needed their consent. Some, we did 19 not. We had no problems with any of them.</p> <p>20 Q. Who were your principal contacts at Symbiot as 21 part of that transaction, the sale of the SMG business?</p> <p>22 A. I dealt with Bruce Wilson, Matt Glover and Steve 23 Glover. And Mark Webb.</p> <p>24 Q. What was Webb's title?</p> <p>25 A. He was a CFO. Although, to be accurate, he was</p>
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<p>1 Q. Did you do any banking at any other financial 2 institutions other than National City?</p> <p>3 A. Not that I'm aware.</p> <p>4 Q. The assets that were owned by -- used as part of 5 SMG's business and that were ultimately sold to Symbiot, 6 were they titled in your name individually?</p> <p>7 A. Some were titled in my name. Some were titled in 8 Allin Company's name. Some were titled in Snow Management 9 Group's name. Some were titled in Peggy's name.</p> <p>10 Q. Were all of the tangible assets that were formally 11 used as part of the business of Snow Management Group 12 transferred to Symbiot?</p> <p>13 A. Everything except the landscaping assets.</p> <p>14 Q. What about the real estate; did real estate stay 15 with you?</p> <p>16 A. I had no real estate. We leased everything.</p> <p>17 Q. What were the annual revenues in the last years of 18 Snow Management Group from snow removal? What did you guys 19 gross?</p> <p>20 A. It's been a while since I've looked at those 21 records. It strikes me that it was in the vicinity of 22 \$15 million.</p> <p>23 Q. In the last year of operation, did expenses exceed 24 revenues?</p> <p>25 A. In '04, yes, we showed a loss.</p>	<p>1 not actually the CFO at the time of the closing. They were 2 contemplating hiring him. And he had reviewed the 3 transaction prior to the closing.</p> <p>4 Q. Did your agreement with Symbiot address your 5 contract with Heritage?</p> <p>6 A. No.</p> <p>7 Q. It was silent as to Heritage?</p> <p>8 A. Yes.</p> <p>9 Q. Did you have any discussions with Wilson, either 10 of the Glovers or Mr. Webb regarding Heritage?</p> <p>11 A. Oh, yes.</p> <p>12 Q. Tell me about those.</p> <p>13 A. We had to advise them of the cancellation. 14 Because it could have materially affected the completion of 15 the transaction, although ultimately it did not.</p> <p>16 Q. And was there any discussion of the Heritage 17 contract prior to its termination?</p> <p>18 A. Yeah, it was a contract that was -- I'm going to 19 turn this off. It was a contract that was part of the 20 listing of all contracts that we had.</p> <p>21 Q. So you disclosed the Symbiot -- excuse me, you 22 disclosed the Heritage contract to Symbiot as part of the 23 negotiations of your buyout?</p> <p>24 A. Yes.</p> <p>25 Q. And was it contemplated that Symbiot would assume</p>

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<p>1 the responsibility for that contract?</p> <p>2 A. Yes.</p> <p>3 Q. And I know I asked you this before; I apologize.</p> <p>4 When did you begin your discussions with Symbiot? Was it</p> <p>5 September?</p> <p>6 A. Yes.</p> <p>7 Q. Was there a letter of intent executed at some</p> <p>8 point prior to the asset purchase agreement that was closed</p> <p>9 on November 15, 2004?</p> <p>10 A. Yes.</p> <p>11 Q. And when was the letter of intent signed?</p> <p>12 A. I don't know the date.</p> <p>13 Q. Was it September?</p> <p>14 A. No.</p> <p>15 Q. Was it before or after the contract with Heritage?</p> <p>16 A. It would have probably been before.</p> <p>17 Q. Did Symbiot receive or assume the accounts</p> <p>18 receivable of the business? Is that part of the assets that</p> <p>19 went over to Symbiot?</p> <p>20 A. Yes.</p> <p>21 Q. Whatever was left in the bank accounts went to</p> <p>22 Symbiot; is that accurate?</p> <p>23 A. I don't know.</p> <p>24 Q. What liabilities remained with you as part of the</p> <p>25 Symbiot transaction?</p>	<p>1 them.</p> <p>2 Q. And how did that resolve? Did they later</p> <p>3 assume --</p> <p>4 A. Soon.</p> <p>5 MR. MARKHAM: It's still pending.</p> <p>6 Q. It's still pending. I see. Am I correct that the</p> <p>7 denial of coverage left you partially uninsured, at least</p> <p>8 pending the outcome of the coverage dispute? If you lose</p> <p>9 that case, is it your -- is it on your dime, I guess is the</p> <p>10 question.</p> <p>11 A. Yes.</p> <p>12 Q. Did Symbiot assume any of that exposure or did</p> <p>13 that stay with you?</p> <p>14 A. That stayed with me.</p> <p>15 Q. Who at Snow Management Group had the first contact</p> <p>16 with anyone on behalf of Heritage? Did you have the first</p> <p>17 contact?</p> <p>18 A. It was not me.</p> <p>19 Q. Was it Vernon, Mr. Vernon?</p> <p>20 A. I don't know who had the first contact.</p> <p>21 Q. Do you have an understanding as to how that</p> <p>22 contact occurred?</p> <p>23 A. I don't know specifically how that occurred.</p> <p>24 Q. Do you know who approached whom?</p> <p>25 A. I don't know that.</p>
Page 42	Page 44
<p>1 A. Anything associated with the landscape portion of</p> <p>2 the business.</p> <p>3 Q. Were there any pending lawsuits against you at the</p> <p>4 time of the Symbiot transaction?</p> <p>5 A. Yeah.</p> <p>6 Q. What were they?</p> <p>7 A. Yours.</p> <p>8 Q. And in addition to that, any others?</p> <p>9 A. There were insurance-related slip-and-fall type</p> <p>10 suits, but that would have been it.</p> <p>11 Q. Was there some sort of a problem with</p> <p>12 subcontractors or one or more subcontractors falsifying an</p> <p>13 insurance certificate?</p> <p>14 A. Oh, we've had that happen on a number of</p> <p>15 occasions.</p> <p>16 Q. Which left the subcontractor and you, pursuant to</p> <p>17 your agreements, uninsured for that particular loss?</p> <p>18 A. We have insurance.</p> <p>19 Q. Well, when you say insurance-related type</p> <p>20 lawsuits, were those all being defended by your insurance</p> <p>21 company, or did your carrier deny coverage on any of the</p> <p>22 suits?</p> <p>23 A. We had an issue with a carrier from the '02/'03</p> <p>24 season, that they had initially denied coverage for various</p> <p>25 snow-related incidents. And we initiated a lawsuit against</p>	<p>1 Q. Personally, what was your first contact with</p> <p>2 anyone on behalf of Heritage?</p> <p>3 A. Fort Lauderdale, Florida, at a meeting that we</p> <p>4 were invited to attend.</p> <p>5 Q. Was that a meeting of the property managers?</p> <p>6 A. That's my understanding of what it was, yes.</p> <p>7 Q. When did that meeting occur?</p> <p>8 A. I think it was in February of '04.</p> <p>9 Q. And who accompanied you on that trip?</p> <p>10 A. Jeff Vernon.</p> <p>11 Q. Tell me what happened on that trip. What was</p> <p>12 the -- what was your interaction with individuals from</p> <p>13 Heritage?</p> <p>14 A. We did have dinner with a number of the Heritage</p> <p>15 individuals, and we were invited to make a presentation</p> <p>16 about Snow Management Group and what we could offer</p> <p>17 Heritage.</p> <p>18 Q. And by presentation, I take it, it was a sales</p> <p>19 pitch, here's what we can do for you?</p> <p>20 A. No, it wasn't a sales pitch. We were invited to</p> <p>21 educate the property managers about Snow Management Group</p> <p>22 and what we do. At the -- at that meeting, Bob Prendergast</p> <p>23 stood up and told everybody, these are the people we're</p> <p>24 going to deal with next year, and we want you to be educated</p> <p>25 as to how they do business.</p>

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<p>1 Q. Now, this is several months before the contract.</p> <p>2 Were you looking to obtain Heritage's business when you made</p> <p>3 that presentation?</p> <p>4 A. It was my understanding that we already had their</p> <p>5 business. This was a formality to bring other people within</p> <p>6 Heritage on board and to buy into the idea of consolidating</p> <p>7 the contract.</p> <p>8 Q. Did you have a contract with Heritage at that</p> <p>9 time?</p> <p>10 A. No, just a verbal commitment.</p> <p>11 Q. And I take it since this was your first contact</p> <p>12 with Heritage, that whatever verbal commitment you</p> <p>13 understood to exist would have been between someone at</p> <p>14 Heritage and another representative of SMG; is that</p> <p>15 accurate?</p> <p>16 A. I was there when he made -- the initial comment</p> <p>17 that I heard, the first time that I heard a commitment was</p> <p>18 when Bob Prendergast stood up in front of the 30 or 35</p> <p>19 people that were there and said, these are the people we're</p> <p>20 doing business with.</p> <p>21 Q. Okay. But you knew at that point you didn't have</p> <p>22 a contract with Heritage, correct?</p> <p>23 A. We did not have a written contract.</p> <p>24 Q. And you hadn't negotiated terms of any other</p> <p>25 arrangement, had you?</p>	<p>1 interact with -- directly with anyone at Heritage?</p> <p>2 A. That's correct.</p> <p>3 Q. Had you or SMG done any work at all for Heritage</p> <p>4 prior to Fort Lauderdale?</p> <p>5 A. Not that I'm aware of. Or not that I recall.</p> <p>6 Q. Recognizing that it would have been Mr. Vernon</p> <p>7 involved, when did actual negotiations of terms of an</p> <p>8 agreement commence between SMG and Heritage? Do you have an</p> <p>9 understanding?</p> <p>10 A. My recollection is that that began in either May</p> <p>11 or June.</p> <p>12 Q. '04?</p> <p>13 A. Yes.</p> <p>14 Q. Did you have an understanding as to who was</p> <p>15 Mr. Vernon's principal contact or contacts at Heritage?</p> <p>16 A. The only name that I heard on a regular basis up</p> <p>17 until the actual contract execution was Bob Prendergast.</p> <p>18 (J. Allin Deposition Exhibit 1 marked for</p> <p>19 identification.)</p> <p>20 Q. Mr. Allin, I previously marked -- or had</p> <p>21 previously marked an Exhibit A, which was the contract,</p> <p>22 which we'll come back to. I'm now showing you a document</p> <p>23 we've identified as your Deposition Exhibit 1. Do you</p> <p>24 recognize this document?</p> <p>25 A. I have seen it before.</p>
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<p>1 A. That's correct.</p> <p>2 Q. Did SMG send any promotional materials to Heritage</p> <p>3 before or after that meeting?</p> <p>4 A. I don't know.</p> <p>5 Q. Would that have been Mr. Vernon's scope of</p> <p>6 employment, his responsibility?</p> <p>7 A. It would have fallen within his responsibility to</p> <p>8 do so, yes.</p> <p>9 Q. Between the meeting in Fort Lauderdale and the</p> <p>10 execution of the contract, did you have any direct</p> <p>11 negotiations or dealings with individuals at Heritage?</p> <p>12 A. Not by voice. I reviewed certain documents that</p> <p>13 were forwarded to me from Jeff Vernon, and made comments and</p> <p>14 suggestions.</p> <p>15 Q. So what would happen is Vernon -- Vernon was your</p> <p>16 interface with Heritage?</p> <p>17 A. Essentially, yes.</p> <p>18 Q. All right. And as things would develop, he would</p> <p>19 share information or documents with you?</p> <p>20 A. Not every document. But when he needed advice, he</p> <p>21 would contact me. There was, as I recall, one or two</p> <p>22 e-mails directly between myself and Bob Prendergast late in</p> <p>23 the game.</p> <p>24 Q. Okay. Other than that, though, between Fort</p> <p>25 Lauderdale and the execution of the agreement, you did not</p>	<p>1 Q. This was apparently a letter authored by Jeffrey</p> <p>2 Vernon directed to Heritage -- I'm sorry, strike that. This</p> <p>3 is a letter from Heritage to Mr. Vernon. That's what I</p> <p>4 would call a nonbinding letter of intent. Were you shown</p> <p>5 this at or about the time it was received?</p> <p>6 A. I don't know when I saw it specifically.</p> <p>7 Q. When you did review it, did you understand at that</p> <p>8 time that it was a nonbinding expression of Heritage's</p> <p>9 intent to enter into a contract with you?</p> <p>10 A. I see what it says.</p> <p>11 Q. Is that the way you understood it when it arrived?</p> <p>12 A. I can't say as I understood it one way or the</p> <p>13 other.</p> <p>14 (J. Allin Deposition Exhibit 2 marked for</p> <p>15 identification.)</p> <p>16 Q. Let me show you what we'll mark as your Deposition</p> <p>17 Exhibit 2. This is a compilation of documents. The one I'm</p> <p>18 going to show the witness now is the last two pages. Have</p> <p>19 you seen this document before?</p> <p>20 A. Yeah.</p> <p>21 Q. Who authored Exhibit 2?</p> <p>22 A. I did.</p> <p>23 Q. Am I correct that this document relates to the</p> <p>24 arrearages owed to your subcontractors?</p> <p>25 A. There's other things, but it does address that,</p>

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<p>1 yes.</p> <p>2 Q. You had mentioned that one of the subcontractors</p> <p>3 ultimately did commence an action against you. When was</p> <p>4 that filed? Was it before or after the Symbiot transaction?</p> <p>5 A. After. Long after.</p> <p>6 MR. MARKHAM: Just so it's clear, it's an AAA</p> <p>7 arbitration. It's not what you and I would</p> <p>8 consider a lawsuit.</p> <p>9 A. I'm not a lawyer.</p> <p>10 Q. That's fine. Appreciate the clarification. The</p> <p>11 document we've marked as your Exhibit 2 is a letter dated</p> <p>12 April 15, 2004 to SMG Service Providers all over the United</p> <p>13 States, Re: This past winter season. And it was executed</p> <p>14 signed by you, Jeff Vernon, Lisa Edwards and Mike Suleski.</p> <p>15 A. Correct.</p> <p>16 (J. Allin Deposition Exhibit 3 marked for</p> <p>17 identification.)</p> <p>18 Q. Take a look at Exhibit 3. Tell me if you've seen</p> <p>19 that one before. I've handed you Exhibit 3, which appears</p> <p>20 to be a letter dated October 2, 2004 on the letterhead of</p> <p>21 Centrus Group, Incorporated, business planning and</p> <p>22 turnaround management, Re: Allin Companies/Snow Management</p> <p>23 Group. Signed by Robert L. Cohen. Is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. Have you seen this one before?</p>	<p>1 A. Yes.</p> <p>2 (J. Allin Deposition Exhibit 4 marked for</p> <p>3 identification.)</p> <p>4 Q. I show you what we've marked as Exhibit 4. It's a</p> <p>5 letter dated October 21, 2004 also from Centrus Group. The</p> <p>6 addressee is covered up again. Re: Allin and Companies and</p> <p>7 Snow Management Group. The author of the letter apparently</p> <p>8 was a Robert L. Cohen again. Have you seen this letter</p> <p>9 before?</p> <p>10 A. Yes.</p> <p>11 Q. This refers to a letter of intent regarding the</p> <p>12 purchase of assets of Snow Management Group by an</p> <p>13 unidentified entity. Do you understand this to be in</p> <p>14 reference to Symbiot?</p> <p>15 A. Yes.</p> <p>16 (J. Allin Deposition Exhibit 5 marked for</p> <p>17 identification.)</p> <p>18 Q. I show you now a note or a notice that I</p> <p>19 understand came to Heritage anonymously. And I've marked</p> <p>20 this as Deposition Exhibit 5. Have you ever seen that</p> <p>21 before today?</p> <p>22 A. No.</p> <p>23 Q. Recognizing that you're only seeing that for the</p> <p>24 first time today, do you have any knowledge of who may have</p> <p>25 sent this notice to Heritage?</p>
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<p>1 A. At one point I would have seen it, yes.</p> <p>2 Q. Was this sent to your service providers?</p> <p>3 A. I can't tell who this one was sent to.</p> <p>4 Q. It appears to have been redacted. By whom, I</p> <p>5 don't know.</p> <p>6 A. I don't know what redacted is.</p> <p>7 Q. That means the addressee has been obliterated, has</p> <p>8 been blocked out.</p> <p>9 A. Okay.</p> <p>10 Q. But am I correct that you were aware on or about</p> <p>11 October 2, 2004 that Centrus Group was sending out a letter</p> <p>12 in this form to at least your service providers and perhaps</p> <p>13 other creditors on behalf of Allin and Companies?</p> <p>14 A. Yes.</p> <p>15 Q. And you understood at the time that the letter</p> <p>16 sent by Centrus was proposing or advising these creditors</p> <p>17 that there were a couple of possible avenues or options for</p> <p>18 addressing debt owed by Allin and Companies and Snow</p> <p>19 Management Group, one of which was the possibility that</p> <p>20 Allin and Companies would be acquired, which would create</p> <p>21 some additional cash. The second was to solicit the support</p> <p>22 of the company's creditors to accept a payout of debt based</p> <p>23 upon profit performance of the company over a period of</p> <p>24 time. And then the third was a sweat -- a swap of debt for</p> <p>25 equity by the creditors.</p>	<p>1 A. We suspect we know who sent it.</p> <p>2 Q. Who do you suspect?</p> <p>3 A. Karioty.</p> <p>4 Q. That's the entity that asserted the claim against</p> <p>5 you and is currently in AAA arbitration?</p> <p>6 A. Yes.</p> <p>7 (J. Allin Deposition Exhibit 6 marked for</p> <p>8 identification.)</p> <p>9 Q. Mr. Allin, I've presented you with what we've now</p> <p>10 marked as your Deposition Exhibit 6. This is a compilation</p> <p>11 of documents that we received from you as part of the</p> <p>12 discovery in this case. It appears to be spreadsheets and</p> <p>13 schedules of expenses. And I have several questions</p> <p>14 regarding these documents. Let me ask you this. Who was</p> <p>15 responsible for generating these documents?</p> <p>16 A. The initial work was done by an administrative</p> <p>17 assistant who worked for us for a short period of time, and</p> <p>18 then passed on to the administrative assistant who was with</p> <p>19 us until I was separated from Symbiot.</p> <p>20 Q. Okay. Who was the original administrative</p> <p>21 assistant?</p> <p>22 A. Julie somebody.</p> <p>23 Q. Can't recall her last name?</p> <p>24 A. I don't pay attention to other women in my office.</p> <p>25 Q. That's a smart and diplomatic answer. But in all</p>

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<p>1 seriousness, do you have any recollection of her last name?</p> <p>2 A. I do not. That doesn't mean she didn't have a</p> <p>3 last name, I just don't know what it was.</p> <p>4 Q. When did Julie leave the company?</p> <p>5 A. Oh, I don't think she was there about a week.</p> <p>6 Q. So she was a short-term?</p> <p>7 A. When I said a short period of time, I mean short.</p> <p>8 Q. And was her principal responsibility for the week</p> <p>9 that she was there to work on this?</p> <p>10 A. Actually, I do believe that's exactly what it was.</p> <p>11 Q. When was she employed?</p> <p>12 A. It would have been right about the time Heritage</p> <p>13 filed the lawsuit.</p> <p>14 Q. Was she hired to do this?</p> <p>15 A. No.</p> <p>16 Q. Heritage employees, are they required to keep any</p> <p>17 type of time cards or time sheets or other time records?</p> <p>18 A. I would have no idea what Heritage's policy is for</p> <p>19 that.</p> <p>20 Q. That's my mistake. I misspoke. At Allin and</p> <p>21 Companies and SMG, are your employees required to maintain</p> <p>22 or keep any time records?</p> <p>23 A. Generally, no.</p> <p>24 Q. Are there exceptions? When you say generally.</p> <p>25 A. There might be from time to time, when we want to</p>	<p>1 We were making, along with Bob Cohen's assistance,</p> <p>2 considerable progress into determining what had created the</p> <p>3 issues and what we would do to make sure that it didn't</p> <p>4 happen again.</p> <p>5 Q. So you were calling and reducing unprofitable</p> <p>6 business, not renewing unprofitable business, and at the</p> <p>7 same time trying to grow in other areas?</p> <p>8 A. Yes. But that wasn't all of it. We were</p> <p>9 addressing certain procedural and operational issues on</p> <p>10 certain sites in order to ensure profitability.</p> <p>11 Q. Did you discuss Symbiot with anyone from Heritage</p> <p>12 prior to the execution of the agreement?</p> <p>13 A. No. But we didn't discuss Symbiot with any of our</p> <p>14 customers.</p> <p>15 Q. Okay. With the sale of substantially all of SMG's</p> <p>16 assets to Symbiot, the snow removal assets, would it be fair</p> <p>17 to say that Allin and Companies did not retain any</p> <p>18 significant snow removal capacity after that transaction?</p> <p>19 A. That would be accurate.</p> <p>20 Q. So then the only way the Heritage contract could</p> <p>21 be serviced would have been through Symbiot after the SMG</p> <p>22 part of the business was sold to Symbiot.</p> <p>23 A. That would be accurate.</p> <p>24 Q. In other words, there was no way you were going to</p> <p>25 be able to do that business as John Allin doing business as</p>
Page 54	Page 56
<p>1 bill a customer on a per-hour basis. But it would be few</p> <p>2 and far between.</p> <p>3 Q. How about the office or administrative staff; are</p> <p>4 they required to maintain any time records?</p> <p>5 A. No. As I've said to others previously, we're not</p> <p>6 a law firm and we don't keep track to the minute of what</p> <p>7 everybody is doing.</p> <p>8 Q. As a percentage, had the Heritage contract gone</p> <p>9 forward, how large of a portion of your business would it</p> <p>10 have been?</p> <p>11 A. Probably somewhere between 15 and 20 percent.</p> <p>12 Q. When you contracted with Heritage, were you</p> <p>13 concerned at all, based upon the prior problems you had had</p> <p>14 with cash flow and service providers who had not been paid</p> <p>15 at that time -- in other words, did it cause you any concern</p> <p>16 that you were taking on what sounds, to me, to be a very</p> <p>17 substantial new customer at a time where you didn't -- you</p> <p>18 had not had the cash flow to stay current with your service</p> <p>19 providers to date?</p> <p>20 A. Not in the least.</p> <p>21 Q. Why not?</p> <p>22 A. We had multiple parties who were interested in</p> <p>23 either becoming equity partners or acquiring SMG. And we</p> <p>24 had done some in-depth analysis of certain customers, and</p> <p>25 had not renewed contracts that we knew were not profitable.</p>	<p>1 Allin Companies and Snow Management Group after you sold the</p> <p>2 snow removal business to Symbiot.</p> <p>3 A. I was contractually obligated not to compete with</p> <p>4 the acquired company, with Symbiot.</p> <p>5 Q. So not only did you not retain the capacity, the</p> <p>6 equipment or the ability to perform that contract, the</p> <p>7 arrangement that you entered into with Symbiot expressly</p> <p>8 precluded you from doing so?</p> <p>9 A. On my own, correct.</p> <p>10 Q. Going back to Exhibit 6. Did Mr. Haataja maintain</p> <p>11 any time records, to your knowledge?</p> <p>12 A. I don't know.</p> <p>13 Q. How about Mr. Rohe, R-O-H-E?</p> <p>14 A. I don't know that either.</p> <p>15 Q. How about David Dziuban; did he maintain any time</p> <p>16 records, to your knowledge?</p> <p>17 A. I don't know.</p> <p>18 Q. On the right-hand side of the first page of</p> <p>19 Exhibit 6 you'll see hours at a fixed rate. For example, it</p> <p>20 looks like for Mr. Dziuban, it says, "Regional manager,</p> <p>21 dash" -- well, I take that back, I may be misinterpreting</p> <p>22 this.</p> <p>23 Do you see about midway down the page now on the</p> <p>24 left-hand side it says, "Regional manager, dash, SPs, comma,</p> <p>25 site reviews, comma, budgeting." And if you follow that</p>

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<p>1 line across, you'll see an amount, \$3,800. It looks like,</p> <p>2 "RM, dash, Smallwood." And then 40 hours at \$95 per. Let</p> <p>3 me ask you first. Do you know the identity of the person to</p> <p>4 whom this entry relates?</p> <p>5 A. Yes.</p> <p>6 Q. And who is that?</p> <p>7 A. Mike Smallwood.</p> <p>8 Q. And who is Mike Smallwood?</p> <p>9 A. He would have been the regional field manager for</p> <p>10 New England.</p> <p>11 Q. Was he required to keep time records?</p> <p>12 A. No.</p> <p>13 Q. On what terms was he paid?</p> <p>14 A. Salary plus commission.</p> <p>15 Q. So you weren't paying him \$95 an hour, were you?</p> <p>16 A. No.</p> <p>17 Q. And the 40 hours that's referenced here, do you</p> <p>18 know where that number came from?</p> <p>19 A. It would have been an IM. I am surmising that he</p> <p>20 was contacted and asked how much time he had put into the</p> <p>21 Heritage contract over the course of our dealings with</p> <p>22 Heritage.</p> <p>23 Q. On what basis do you surmise that? Has anyone</p> <p>24 told you that?</p> <p>25 A. Nobody has told me that specifically.</p>	<p>1 that the hours are fairly even: 40, 8, 10, 100, 100, 25,</p> <p>2 200, 80, 40, 100, 100, 100, 100, on Page 1. Is it your</p> <p>3 understanding that those are numbers that were actually</p> <p>4 supplied by each of the individuals listed on the schedule?</p> <p>5 For example, there's Mr. Smallwood at 40, Mr. -- it looks</p> <p>6 like a J. Casey at 8, J. Terrance at 10, Mr. Hrovat at 100</p> <p>7 hours. It's your understanding that those are numbers</p> <p>8 supplied by those individuals?</p> <p>9 A. Yes.</p> <p>10 Q. To your knowledge -- recognizing you didn't</p> <p>11 prepare this. But to your personal knowledge, are there any</p> <p>12 other time records reflecting the activities of the</p> <p>13 individuals listed here other than the schedules?</p> <p>14 A. No.</p> <p>15 Q. And the new hires that you mentioned earlier in</p> <p>16 your deposition, Dziuban, Rohe and Haataja -- Haataja.</p> <p>17 Whatever. Duane.</p> <p>18 A. That's what we called him.</p> <p>19 Q. I can see why. Those are listed here as the last</p> <p>20 three entries on the first page; is that correct?</p> <p>21 A. That's the way it reads, yes.</p> <p>22 Q. We'll leaf through this exhibit here in a moment.</p> <p>23 But as to the individuals listed on Page 1, am I correct</p> <p>24 that there's no detail as far as when they performed the</p> <p>25 hours listed on the first page of Exhibit 6?</p>
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<p>1 Q. When you -- let me back up as a foundational</p> <p>2 matter. Did you give the assignment to the administrative</p> <p>3 assistants to prepare these schedules?</p> <p>4 A. Yes.</p> <p>5 Q. And what were your instructions to the</p> <p>6 administrative assistants regarding the preparation of these</p> <p>7 schedules?</p> <p>8 A. Contact the various people who had input into the</p> <p>9 Heritage contract and find out how much time they've got.</p> <p>10 Ascertain direct costs. And put it all together so that I</p> <p>11 can submit it to counsel.</p> <p>12 Q. I talked to you a moment ago about Julie -- the</p> <p>13 first administrative assistant who only worked for you for a</p> <p>14 short time. What was the name of the second administrative</p> <p>15 assistant?</p> <p>16 A. Mary Russell.</p> <p>17 Q. Where is Mary now; still in Erie?</p> <p>18 A. Yes.</p> <p>19 Q. Does she still work for Symbiot?</p> <p>20 A. No.</p> <p>21 Q. Did she cease to work for Symbiot at or about the</p> <p>22 same time that your employment ended?</p> <p>23 A. The same day.</p> <p>24 Q. On the right-hand side -- I won't go through each</p> <p>25 one of these, each one of these entries. But you'll see</p>	<p>1 A. Not to my knowledge.</p> <p>2 Q. So it's basically a round number at a particular</p> <p>3 hourly rate for each of the affected individuals?</p> <p>4 A. That's the way it reads, yes.</p> <p>5 Q. The \$95 an hour, how was that determined?</p> <p>6 A. My instructions were that we would use rates --</p> <p>7 no, that's a mistake. The instructions to me were to</p> <p>8 utilize rates that we would charge a customer if we were</p> <p>9 doing the work on an hourly rate basis.</p> <p>10 Q. And where did you receive those instructions, from</p> <p>11 whom?</p> <p>12 A. From counsel at the time.</p> <p>13 Q. We've talked about -- well, we've talked a little</p> <p>14 bit about the three new hires. But if you would be kind</p> <p>15 enough on Page 1 to just run down the individuals listed in</p> <p>16 the second column from the right. And tell me their full</p> <p>17 names, if you recall them, and what their positions were</p> <p>18 with Allin and Companies, just so I know who these folks</p> <p>19 are.</p> <p>20 A. Okay.</p> <p>21 Q. Smallwood.</p> <p>22 A. Michael Smallwood. He was a regional field</p> <p>23 manager for the northeast region. Jessie Casey was a field</p> <p>24 manager who lived in Connecticut and worked in Connecticut</p> <p>25 and New York. Jason Terrance lived in Connecticut and</p>

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<p>1 worked Connecticut; field manager. Ralph Hrovat was the 2 regional manager based in New Jersey covering the 3 midAtlantic from roughly Delaware up to lower New York. 4 Ralph Santoro was based in New Jersey and worked 5 mostly in New Jersey. However, Ralph was one of those 6 individuals if we said, drive to Albuquerque and measure a 7 site, he would do it, and not stop until he got home. 8 Dave Gallagher is a production coordinator. And 9 Dave Gallagher lives in Allentown, and his job was to visit 10 sites to interact with service partners or service providers 11 in order to properly educate them about the methodologies we 12 wanted to use in clearing of the sites. 13 Terry Pancura was -- she worked in Erie for Rudy 14 Rieder, and handled the producing of the production sheets. 15 And those sheets would tell service partners where the snow 16 was to be stacked and the different obstacles that were on 17 sites. 18 Chet Zelgowski also worked for Rudy Rieder. And 19 Chet would function as a supervisor to Terry. And he also 20 interacted with service providers on a direct basis. 21 Rudy Rieder was in charge of production. So it 22 was his job to make sure the sites were maintained and 23 equipment got to different locations. Chet and Terry worked 24 for him. 25 Brian Marshal, strategic account manager. He was</p>	<p>1 advising him; and near the end of the contract, negotiation; 2 and the interaction I had with the insurance company and 3 Heritage. And it's my time spent. 4 Q. Now, the contract was signed on -- by you on or 5 about October 4, 2004, and terminated one month later. Did 6 those hours take place during that one-month time, or does 7 it cover a broader period of time? 8 A. It covers a broader period of time. 9 Q. What period of time is covered by that? 10 A. From the time Heritage was beginning to insist 11 that we hire people and put them in place, regardless of 12 whether we had a written contract in place, up through the 13 decision to terminate the three individuals who had been 14 hired strictly from Heritage. 15 Q. And when you say at the time Heritage was 16 insisting that you hire people even though you didn't have a 17 written contract, when did that occur? 18 A. Oh, my goodness, that started back in August. 19 They were just unmerciful about, have you hired anybody yet, 20 and do you have people yet, and have you contacted service 21 providers, and we need to get this going, and you're not 22 going to be able to perform. 23 Q. And who said that? 24 A. That was -- most of that contact came from Bob, 25 although we were getting inquiries from all over the country</p>
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<p>1 ultimately going to be responsible for Heritage, and, in 2 fact, did a lot of the leg work putting together -- 3 validating the pricing structure that Heritage had provided 4 us with. And he too had interaction with Bob and other 5 individuals at Heritage. 6 Dave, Bryan and Duane we've had discussion about. 7 Do you want me to say that again? 8 Q. That's all right, we've already identified them. 9 A. And for me, that's pretty good, because I'm bad 10 with names. 11 Q. That's not bad. All the individuals except for 12 Dave, Bryan and Duane at the bottom here, though, those were 13 existing employees who were already working on a salaried or 14 a salary commission mixed basis as of the time you entered 15 into the contract with Heritage? 16 A. That's correct. I do not believe any of these 17 individuals were hired as a result of the Heritage contract, 18 but I can't be absolutely certain about that. 19 Q. On the third page of Exhibit 6 there's a notation 20 here, "Business development, \$22,500. J. Allin, 100 hours 21 at \$225 per." Do you see that about three-quarters of the 22 way down the page? 23 A. I do. 24 Q. What does that represent? 25 A. Time that I spent interacting with Jeff and</p>	<p>1 from site people who were in charge of Heritage sites 2 saying, you know, you've got to get going here, it's going 3 to snow. And service providers for Heritage who were 4 calling and saying, we've been doing this work for years, 5 and we've been notified by Heritage that you have the 6 contract; well, that's not entirely true, we don't actually 7 have a signed contract; yeah, but we've got to get going. 8 That kind of thing. 9 Q. The statements that you attributed to Bob 10 Prendergast, were those made to you or Mr. Vernon? 11 A. To Mr. Vernon. 12 Q. So you don't have personal knowledge of those 13 aside from what Mr. Vernon has told you? 14 A. That's accurate. 15 Q. There was a provision in the contract, Exhibit 16 A -- and I know I'm whipsawing you back and forth between 17 documents. Keep that schedule out, though, because I'm 18 going to come right back to it. 19 A. That particular page? 20 Q. Yeah, I'll be coming back to that. If you take a 21 look in the contract, there's a provision in here talking 22 about providing signed subcontractor agreements to Heritage 23 on or before October 31, 2004. I believe it's Paragraph 4. 24 It would be the second sentence. "Contractor shall deliver 25 copies of the signed subcontracts for each property to owner</p>

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<p>1 prior to October 31, 2004." Do you know whether that was 2 done?</p> <p>3 A. We were making a concerted effort to -- my 4 understanding was we were making a concerted effort to 5 comply with that time frame. However, it was my 6 understanding that it was also understood between Jeff and 7 Bob Prendergast that that was an unrealistic expectation, 8 given the fact that the contract was signed on October 3rd. 9 And while we were making progress towards that prior to the 10 actual contract signing, we were going to have to work 11 towards filling higher percentage snow markets first.</p> <p>12 Q. To your knowledge, prior to October 31, 2004, or 13 at any time prior to the termination of the Heritage 14 contract by Heritage, had any subcontracts been provided to 15 Heritage?</p> <p>16 A. I don't know.</p> <p>17 Q. If that happened, you have no knowledge of it.</p> <p>18 A. That's correct.</p> <p>19 Q. And any discussions regarding flexibility on that 20 date, you weren't privy to any discussions with the Heritage 21 individuals?</p> <p>22 A. Not firsthand experience, that's correct.</p> <p>23 Q. Going back to Exhibit 6. It's fair to say, is it 24 not, that for each of the entries here that specify hours by 25 an individual at a specific rate and then a corresponding</p>	<p>1 responsibilities, they weren't paid anything on top of that 2 which corresponds to this schedule, were they?</p> <p>3 A. No.</p> <p>4 Q. And to the best of your knowledge, none of the 5 hours listed here were determined based upon an 6 administrative assistant consulting any business records. 7 This was -- it came from some other source; is that correct?</p> <p>8 A. As I previously stated, it would have come from 9 the individual or their supervisor who asked the individual 10 how much time they spent.</p> <p>11 Q. That was basically your instructions to the 12 administrative assistant?</p> <p>13 A. Yes. Because I know we don't keep time locks 14 locks for different projects in a fashion which you have 15 asked me.</p> <p>16 Q. On the fourth page of Exhibit 6 there's a list of 17 expenses. Flight to Fort Lauderdale, John Allin; flight to 18 Fort Lauderdale, Jeff Vernon; ground transportation; hotel. 19 Would that have been in connection with the presentation 20 that you made, or at least some of these in connection with 21 the presentation that you made to Heritage at their property 22 managers' meeting?</p> <p>23 A. Yes.</p> <p>24 Q. These dates are separated by approximately one 25 month. Which of the four entries here relates to that</p>
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<p>1 amount, none of those amounts were actually spent by SMG, 2 were they?</p> <p>3 In other words, you guys didn't write a check in 4 these amounts to anyone or pay anyone. You weren't paid an 5 additional \$22,500, Mr. Vernon wasn't paid \$33,000, Linda, 6 whoever that is, where it lists phone calls, office 7 administration, \$1,080 at the top of Page 3, she wasn't paid 8 \$1,080, was she?</p> <p>9 A. I had stated previously that the amounts there are 10 amounts that we would have charged a customer if we were 11 doing it by the hour.</p> <p>12 Q. I just want to make sure I'm clear and the record 13 is clear, that none of these amounts here were actually 14 expended by Allin.</p> <p>15 MR. MARKHAM: You mean -- let me make sure I 16 understand it. Obviously, all these people were 17 paid something.</p> <p>18 MR. LANZILLO: Right.</p> <p>19 MR. MARKHAM: When you say they weren't paid 20 \$1,000; they were paid \$1,000 because they get a 21 salary and they get paid every week. So I'm 22 just -- I'm having a hard time understanding 23 exactly what it is you're asking.</p> <p>24 Q. Other than what these people otherwise would have 25 been paid as part of their normal employment</p>	<p>1 particular meeting?</p> <p>2 A. It would have been the February 22nd date. 1/21 3 would have been the date we paid for the expense.</p> <p>4 Q. I see. Didn't you regard these expenses as 5 marketing expenses at the time?</p> <p>6 A. I don't know the answer to that.</p> <p>7 Q. In other words, if two months down the road 8 Heritage said, you know, we've found what we think is a 9 better deal or we've decided to keep this in-house, these 10 are amounts for which you would not have expected to receive 11 compensation.</p> <p>12 A. That's correct.</p> <p>13 Q. The next page, I assume, is a summary that would 14 match up with other schedules. I don't know why it's in 15 this particular order. This is the way it was produced to 16 me. Do you have any knowledge of the content of this page 17 of Exhibit 6?</p> <p>18 A. No.</p> <p>19 Q. On Page 6 of Exhibit 6 --</p> <p>20 A. Show me the page.</p> <p>21 Q. At the top of the page it's -- upper left-hand 22 corner it says, "Expense, JV travel expense."</p> <p>23 A. I'm on that page.</p> <p>24 Q. All right. And then it has -- it says, "Brian 25 Marshal, travel expenses." Are there any expenses for</p>

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<p>1 Mr. Marshal?</p> <p>2 A. I don't know.</p> <p>3 Q. "Peggy Allin, dash, interviews." Did Mrs. Allin</p> <p>4 travel to these locations? Is that the point of this</p> <p>5 schedule?</p> <p>6 A. That's correct.</p> <p>7 Q. Legal counsel at the bottom of the page is empty.</p> <p>8 There's nothing there for legal counsel. Then supplies,</p> <p>9 labels, envelopes and the like. Do you know how those</p> <p>10 were -- how those amounts were determined?</p> <p>11 A. Those would have been direct expenses that we</p> <p>12 incurred in sending out of the RFP to the service providers.</p> <p>13 That's noted on the right-hand side.</p> <p>14 Q. Were those tracked or are those estimates?</p> <p>15 A. Those would have been tracked.</p> <p>16 Q. On the next page, appears to be an accounting of</p> <p>17 time for you and for Mr. Vernon. For yourself individually</p> <p>18 on 2/18/2004, which, again, is several months before the</p> <p>19 contract. It says, "Preparation of presentation in</p> <p>20 Florida." I assume that's the same presentation we</p> <p>21 discussed earlier at the property managers meeting?</p> <p>22 A. That's correct.</p> <p>23 Q. And you put down ten hours?</p> <p>24 A. Correct.</p> <p>25 Q. Was that an estimate?</p>	<p>1 \$45 an hour. To your knowledge, there's no further detail</p> <p>2 as to who was called, when they were called, the amount of</p> <p>3 each call, anything like that, is there?</p> <p>4 A. That's correct.</p> <p>5 MR. MARKHAM: So it's clear, Rich, I think this</p> <p>6 may be the eighth page of this exhibit.</p> <p>7 MR. LANZILLO: Thank you.</p> <p>8 A. The one that says sites entered in the upper</p> <p>9 left-hand corner?</p> <p>10 Q. That's it.</p> <p>11 A. Make sure we're all talking about the same one.</p> <p>12 Q. And I think we discussed this earlier. To your</p> <p>13 knowledge, in terms of the time reflected here that --</p> <p>14 corresponding to specific individuals, to your knowledge,</p> <p>15 there's no other records that would more specifically</p> <p>16 document what was done, when it was done, and the amount of</p> <p>17 time devoted; is that fair?</p> <p>18 A. Yes, sir.</p> <p>19 Q. That will save us some time. And you personally</p> <p>20 did not discuss the activities or the times referenced here</p> <p>21 with any of the individuals listed, did you?</p> <p>22 A. That's correct.</p> <p>23 Q. Did Mrs. Allin participate in the compilation of</p> <p>24 this document, to your knowledge?</p> <p>25 A. I don't know.</p>
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<p>1 A. Yes.</p> <p>2 Q. And then the next entry, it shows 2/22 through</p> <p>3 2/24/04, "Trip to present SMG to Heritage." Is that a fair</p> <p>4 characterization of the purpose of the trip?</p> <p>5 A. No. And I did not review this before you got it.</p> <p>6 And, quite frankly, that kind of charges you for our sleep</p> <p>7 time, which is not kosher.</p> <p>8 Q. I mean, that does include every hour you were on</p> <p>9 the trip.</p> <p>10 A. Yeah. And my instructions to my administrative</p> <p>11 assistant was to put together the hours that had been</p> <p>12 expended. Those hours should have been, to be fair, not</p> <p>13 included.</p> <p>14 Q. The same thing for Mr. Vernon. 20 hours for prep,</p> <p>15 48 hours for the trip itself?</p> <p>16 A. To be fair, yes.</p> <p>17 (Discussion held off the record.)</p> <p>18 Q. Where did your administrative assistant get these</p> <p>19 numbers, though?</p> <p>20 A. She would have gotten them from me and from Jeff.</p> <p>21 Q. Your numbers, are these estimates?</p> <p>22 A. Yes.</p> <p>23 Q. And the next page, the seventh page of the</p> <p>24 exhibit, there's several entries for -- and it's just</p> <p>25 generically phone calls. It says, ops audit, 24 hours at</p>	<p>1 Q. On the next page -- strike that. Actually, let's</p> <p>2 skip a couple of pages until you get to the page of</p> <p>3 Exhibit 6 that has printing only on the left third of the</p> <p>4 page. And the words at the top of the page begin, "Data</p> <p>5 enter some of the 110 sites into," and then below that</p> <p>6 there's a date, 10/20/2004. PAMS, appears to be four hours.</p> <p>7 And below that, "Calls to prospective bidders." Do you see</p> <p>8 that?</p> <p>9 A. I have that page.</p> <p>10 Q. Do you have any knowledge concerning the</p> <p>11 activities described here, who performed them, how this</p> <p>12 information was compiled, other than by your administrative</p> <p>13 assistant?</p> <p>14 A. I do not.</p> <p>15 Q. In the narrative here where it says 10/19/04</p> <p>16 through 11/11/04, it says 24 -- apparently 24 hours on the</p> <p>17 RPF package. And below that there's an entry. Let me just</p> <p>18 read it. "Calls to and from prospective bidders re:</p> <p>19 confirmation of SPs to receive RFP packets, calls to SP to</p> <p>20 confirm receipt of RFP package, site specific questions re:</p> <p>21 scope of work, follow-up calls, regarding Symbiot not</p> <p>22 responsible for contract." Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. First of all, what's the reference to SP, if you</p> <p>25 know?</p>

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<p>1 A. Service provider.</p> <p>2 Q. And then follow-up calls regarding Symbiot not</p> <p>3 responsible for contract. Do you know what that's --</p> <p>4 A. I do not.</p> <p>5 Q. -- referring to?</p> <p>6 A. Yes, I do. Once the contract was cancelled, we</p> <p>7 continued to receive calls from service providers who were</p> <p>8 still under the impression that we had the contract by that</p> <p>9 point in time, we were part of Symbiot, or that we were</p> <p>10 going to be part of Symbiot. And we had to answer those</p> <p>11 calls.</p> <p>12 Q. PAMS, do you know what that -- it's all caps. Is</p> <p>13 that an acronym, someone's name?</p> <p>14 A. It is.</p> <p>15 Q. What is it?</p> <p>16 A. It is the name of the provider account manager</p> <p>17 system. It is a computer software program.</p> <p>18 Q. The provider account management software, what</p> <p>19 does that document? What does that record?</p> <p>20 A. We had a software program where each site would be</p> <p>21 entered into the account management software. So if a</p> <p>22 service provider or a site manager were to call about that</p> <p>23 particular site, we would log in the time of the call and</p> <p>24 the nature of the call and the action that was required, if</p> <p>25 any. And then what action was performed. It's so we can</p>	<p>1 for local newspapers in various cities needed, contacting</p> <p>2 newspapers to gather info placing ads. Presenting pricing</p> <p>3 to JA for approval to place ads."</p> <p>4 A. Based on the content?</p> <p>5 Q. Um-hum.</p> <p>6 A. I believe this would be Peggy Allin's log.</p> <p>7 Q. As far as who is doing the service here -- or</p> <p>8 strike that -- who is engaging in the activity described</p> <p>9 here, do you know who -- is it all Peggy Allin, to your</p> <p>10 knowledge, or can you tell?</p> <p>11 A. That's a question that you'll probably have to ask</p> <p>12 her, because I can't definitively say one way or the other.</p> <p>13 Q. You have no personal knowledge of the information</p> <p>14 reflected on this schedule; is that fair?</p> <p>15 A. It says here I had dinner with the new employees</p> <p>16 at the Colony Restaurant, third from the bottom. And I do</p> <p>17 remember that. I don't know what the \$3 refers to.</p> <p>18 Q. Actually, I would guess that's three hours.</p> <p>19 A. Three hours, right.</p> <p>20 Q. Other than that, is there anything else on here</p> <p>21 concerning what you have personal knowledge?</p> <p>22 A. I can't say that there is. Other than those items</p> <p>23 that she says were reviewed with me. I can't specifically</p> <p>24 state that I remember that date and what that was.</p> <p>25 Q. Other than the detail such that it is that is</p>
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<p>1 keep an accurate accounting of what takes place on the site.</p> <p>2 That all has to be entered into the system and get</p> <p>3 it set up so that we can track what is going on at each</p> <p>4 particular site as it pertains to inquiries or calls that we</p> <p>5 get from or to a provider or the site manager or customer.</p> <p>6 Q. Does the PAMS system include any entries relative</p> <p>7 to Heritage? In other words, was there any input, to your</p> <p>8 knowledge, regarding the Heritage sites?</p> <p>9 A. I don't know specifically. But it generally would</p> <p>10 not have been activated until it snowed.</p> <p>11 Q. Okay. And there had been no snow removal services</p> <p>12 provided at any of those sites as of November 4, to your</p> <p>13 knowledge; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. On the last page of Exhibit 6, I did want to ask</p> <p>16 you a quick question. Again, this appears to be a type of</p> <p>17 summary?</p> <p>18 A. Which page are we on?</p> <p>19 Q. The very last page.</p> <p>20 A. The one that says dates, hours, reason at the top.</p> <p>21 Q. Yeah.</p> <p>22 A. Okay.</p> <p>23 Q. Do you know to whom these entries relate? I mean,</p> <p>24 we've got dates, hours, reason, June 17, '04. 4.0.</p> <p>25 Presumably, that's a reference to hours. "Search Internet</p>	<p>1 provided in Exhibit 6, are you aware of any other</p> <p>2 documentation or means whereby I can determine whether the</p> <p>3 hours listed here for these various employees in schedule</p> <p>4 six, whether those hours were performed before or after the</p> <p>5 contract date with Heritage in October of 2004?</p> <p>6 A. I do not.</p> <p>7 Q. And I take it from your earlier testimony, and</p> <p>8 correct me if I'm wrong, that you did not participate in any</p> <p>9 face-to-face or conversational negotiations concerning the</p> <p>10 content of the contract that we've marked as Exhibit A, your</p> <p>11 contract with Heritage.</p> <p>12 A. Face to face with whom?</p> <p>13 Q. Anyone from Heritage.</p> <p>14 A. That's correct.</p> <p>15 Q. You did make some changes, I understand, which are</p> <p>16 noted in the agreement itself. If you have a copy there,</p> <p>17 maybe we can go through them quickly. There's handwriting</p> <p>18 on Page 3, the lower right-hand corner. Is that your</p> <p>19 handwriting?</p> <p>20 A. It is.</p> <p>21 Q. The first set of changes, the first changes appear</p> <p>22 to be on Page 5. A line is crossed out, and there's</p> <p>23 initials. Is that your modification?</p> <p>24 A. It is.</p> <p>25 Q. Page 7 appears to be dated with your initials as</p>

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<p>1 well. And then there's a change on Page 8. Is that your 2 handwriting for that change as well? 3 A. It is. 4 (J. Allin Deposition Exhibit 7 marked for 5 identification.) 6 Q. Mr. Allin, I'm showing you now what I've marked as 7 your Deposition Exhibit 7. This is entitled Snow Removal 8 and Ice Management Services Master Agreement. Do you 9 recognize this document? 10 A. I do. 11 Q. Is this a document prepared by or on behalf of 12 SMG? 13 A. Yes. 14 Q. Would this be the form of the agreement that's 15 referenced in -- I believe it's Paragraph 4 of the agreement 16 between Heritage and you. That's the part of the agreement, 17 the Heritage agreement, that discusses the providing of 18 executed subcontracts to Heritage by SMG on or before 19 October 31, 2004. Is this the form of the document that 20 would have been or should have been provided under the 21 agreement? 22 A. I can't specifically recall what that refers to. 23 Q. Is this the standard form of subcontract that SMG 24 utilized for snow removal services with its service 25 providers?</p>	<p>1 A. Correct. 2 MR. MARKHAM: To make it clear too. I mean, his 3 testimony has been that the closing of the Symbiot 4 deal came well after this contract and after the 5 termination of this contract. 6 Q. The closing occurred on November 15, right? 7 A. November 22nd. 8 Q. When was the agreement with Symbiot signed? 9 A. It was in October. I don't recall exact dates. 10 Q. So when you signed the agreement with Symbiot, you 11 understood you were signing an agreement that would render 12 it impossible for you to perform under your contract with 13 Heritage. 14 A. I would take some issue with that. But for me 15 personally, to do it on my own? 16 Q. Yes. 17 A. Yes. 18 Q. Let me show you what will be the final exhibit 19 we'll mark. 20 (J. Allin Deposition Exhibit 8 marked for 21 identification.) 22 Q. Mr. Allin, let me show what you we've marked as 23 your Deposition Exhibit 8. And correct me if I'm wrong. 24 This is a letter dated November 3, 2004, which I believe was 25 faxed to you on November 4, 2004 from Heritage. And this</p>
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<p>1 A. Yes. 2 Q. Prior to its execution, did you read the Heritage 3 agreement in its entirety? 4 A. Yes. 5 Q. And as of the execution of that agreement, you had 6 a letter of intent with Symbiot for the sale of the snow 7 removal part of your business, correct? 8 A. Yes. 9 Q. Did you understand, pursuant to Paragraph 13 of 10 the Heritage agreement, that the agreement was not 11 assignable without Heritage's express consent in its sole 12 discretion? 13 A. Yes. 14 Q. When you proceeded with the final agreement with 15 Symbiot to sell the snow removal part of your business to 16 Symbiot, did you understand that you were executing a 17 restrictive covenant which would preclude you from servicing 18 the Heritage agreement after you sold that part of the snow 19 removal business to Symbiot? 20 A. I don't understand the question. 21 Q. You knew, didn't you, that once you signed that 22 agreement with Symbiot, that John Allin, doing business as 23 Allin and Companies and Snow Management Group, would no 24 longer have the right or the ability to provide the services 25 you had contracted to provide to Heritage.</p>	<p>1 was the notice terminating the contract? 2 A. If I might make a slight correction. This was not 3 faxed to us. 4 Q. Okay. How did you receive this? Via overnight 5 mail, I see. 6 A. That's correct. 7 Q. It's dated November 3. Was it received by you on 8 November 4? 9 A. 4 or 5, I don't recall the exact date. 10 Q. You do recall receiving this notice? 11 A. I do. 12 MR. LANZILLO: Give me one minute. I would just 13 like to talk to Kristina real quick. 14 (Recess held from 11:20 a.m. to 11:25 a.m.) 15 MR. LANZILLO: I am happy to say that I was able 16 to oblige your schedule, including the 15-minute 17 buffer. So those are all the questions I have. 18 MR. MARKHAM: I don't have any questions, and 19 we'll have him read it. 20 21 (Deposition concluded at 11:26 p.m.) 22 23 24 25</p>

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